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Supreme Court of the United States

OCTOBER TERM, ~~1956~~ 57

No. ~~23~~ 3

JUNIUS IRVING SCALES, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 16, 1956
CERTIORARI GRANTED MARCH 26, 1956

Supreme Court of the United States

OCTOBER TERM, 1956

No. 29

JUNIUS IRVING SCALES, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Criminal No. 4320-G

UNITED STATES OF AMERICA

vs.

JUNIUS IRVING SCALES

U.S.C., Title 18, Section 2385—Membership in an organization which teaches and advocates the overthrow of the Government by force and violence

INDICTMENT—Filed November 18, 1954

The Grand Jury Charges:

(1) That during the entire period from in or about January, 1946, and continuously thereafter, up to and including the date of the filing of this indictment, the Communist Party of the United States of America has at all times been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit;

(2) That from in or about January, 1946, and continuously thereafter, up to and including the date of the filing of this indictment, in the Middle District of North Carolina and elsewhere, Junius Irving Scales, the defendant herein, has been a member of said Communist Party of the United States of America, the defendant well knowing during all of said period that said Communist Party of the United States of America was and is a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit.

In violation of Section 2385, Title 18, United States Code.
A True Bill.
W. R. Graham, Foreman. Edwin M. Stanley, United States Attorney.

[fols. 6-14] IN THE UNTED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Excerpts from transcript of Hearing on Motions—April 1, 1955

[fols. 15-16] HENRY REYNOLDS, called as a witness by the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rein:

[fol. 17] Q. Let's take the Greensboro Division for a moment. Will you tell me briefly the manner in which names are chosen to be on panels for the grand and petit jury for the Greensboro Division?

A. Well, requests are sent out under the joint direction of the Clerk and the Jury Commissioner——

Q. The Clerk is yourself?

[fols. 18-22] A. That's right.

Q. And the Jury Commissioner, who was that?

A. At that time Dr. A. W. Plyler. Requests were sent out under the joint direction of these two, constituting the Jury Commission, to men of knowledge and character and standing who, the best we could figure out, knew the people in the respective counties, and asked them to send in suitable names for the jury service.

Q. Was that request sent out on form letters, Mr. Reynolds?

A. Well, not always, but I'd say a good portion of it was.

[fol. 23] The Court: The question is have you already drawn the panel for the Scales case.

The Witness: Oh, yes, sure.

By Mr. Rein:

Q. And when were the names in the jury box from which you drew this panel placed in the jury box?

A. In 1950 and '51.

Q. There have been no additions since 1950 and 1951?

A. There have not.

Q. Therefore it would be correct to say that the names were obtained for the jury box from which the panel for this case was drawn by virtue of the use of the form letter which is Defendant's Motion Exhibit X—is that correct?

A. No, not all of them.

Q. Well, some of them?

A. Yes.

Q. In other words, I want to make it clear that this form letter was used in obtaining the names which were placed in the jury box from which the jury panel for the Scales case was drawn. Is that clear?

A. No, I just said that they were not all obtained by that form letter in the Greensboro Division.

[fols. 24-33] Q. That isn't my question, whether all were obtained. My question is were any of them obtained.

A. Well, I think it's reasonable to assume that they were.

Q. Can you tell me to whom, as best you can recollect, this form letter, Defendant's Motion Exhibit X, was sent in 1950 and '51?

A. Well, they were sent to the chairmen of the Republican and Democratic Executive Committees of the counties, for one thing.

Q. Of the counties comprising the Greensboro Division?

A. That's right. There were also forms sent to the sheriffs of the counties and there were forms sent to the superintendents of public instruction.

Q. Of these various counties?

A. Yes. I can't remember; there was some variation in the counties and I can't tell you offhand just how that was, but I know they were included.

Q. You know that the chairmen of the Republican and Democratic county committees were included, the sheriffs were included, and the superintendents of public schools, and there may have been others; is that correct?

A. Yes, I think that's as near as I can state it.

[fol. 34] Q. But the letters you got back sent you only the names and addresses of the individuals—isn't that correct—with the statement that the person who sent them believed that they were suitable?

A. Well, largely so, but, as I said a while ago, there were exceptions, folks would make comments, I mean the people who sent them in.

Q. The comments were that they thought they would be suitable for jury service?

A. That was one of the things I mentioned, yes, that they thought they would be suitable for jury service.

Q. You didn't get any comments by people sending in names that they thought they would be unsuitable for jury service, did you?

A. No, but I used my own judgment about some of them. I do recall that when they would send in the name of an attorney or a physicial, or somebody of that sort, that we would eliminate them.

[fol. 35] Q. When you, personally, knew him to be an attorney?

A. Well, if the name indicated.

Q. If it said "Doctor" or "Lawyer"?

A. Well, lawyers don't have separate indication like doctors do. Where they were doctors I certainly did, and I knew most of the lawyers over the district and knew when they were lawyers.

Q. So you would get occasionally names of doctors, where you knew by their title, or lawyers, whom you knew personally, and you would eliminate them from the list on that ground; is that correct?

A. Yes, that's correct.

Q. To get back, you say you have these names in a jury box?

A. That's correct.

Q. In what form are they in the jury box? Is each name typed on a separate card?

A. A separate slip of paper, all uniform size.

Q. They are placed in the jury box, and on this separate piece of paper is the name and address of the person?

A. The county, the name and the address.

Q. And nothing else?

A. That's correct.

Q. Aside from that information which you have in the [fols. 36-62] jury box, you have no other information anywhere else in your office with respect to these jurors; is that correct?

A. No, we don't have any other information.

[fols. 63-75] Q. But the only thing you received from them was names of people and addresses?

A. Substantially so, yes, sir.

Q. And that is the basis of your information?

A. That's right, except——

Q. And that is the basis of your knowledge?

Mr. Stanley: Let the witness finish his answer.

The Witness: Except, as I said, comments from the senders or from other sources.

[fol. 76] CHARLES H. COWLES, called as a witness by the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rein:

Q. Mr. Cowles, will you please give your full name and address, for the purposes of the record?

A. Charles H. Cowles, Wilkesboro.

Q. And what is your position there?

A. Deputy Clerk.

Q. For what?

A. For the United States Court for the Middle District.

Q. For the Wilkesboro Division?

A. Yes, sir.

Q. How long have you held that position, Mr. Cowles?

A. Well, I went in there in '41.

Q. You have been Deputy Clerk in charge of the Wilkesboro Division since 1941?

A. Yes, sir.

Q. Did your duties as Deputy Clerk include the selection of names to go into the jury box from which the grand [fol. 77] jurors and petit jurors would be chosen?

A. Well, it is when I am ordered by the Court to do so, yes.

Q. And who would order you to do that?

A. Judge Hayes.

Q. Are you directly responsible to the Judge of the court or are you directly responsible to Mr. Reynolds?

A. Well, I don't know, I guess I'm responsible to both of them.

Q. Did you participate in the selection of names to go into the jury box for the Wilkesboro Division in 1950 and 1951?

A. Yes.

Q. What part did you take in that?

A. Well, the Jury Commissioner and I——

Q. Who was that?

A. That was Mr. R. B. Farr.

Q. Where is he now; is he deceased?

A. He is deceased.

Q. You were telling me the role which you played in selecting names to go into the jury box for the Wilkesboro Division in 1950 and '51.

A. Well, I forget now about whether the office here advised anybody there and advised us to confer with them or not, except a conversation I had probably with Mr. Reynolds [fol. 78] about it. We were told to divide the names equally between the two parties, so far as the number went; that is, we would give the Democrats and the Republicans an equal number of names of persons to give their names to go in the jury box.

Q. That was for all the counties in the Wilkesboro Division?

A. No, that was for Wilkes County—to divide the names in the box equally between the two political parties, regardless of their strength in the county.

Q. And how did you achieve that?

A. I forget what the number was, total number.

Q. How did you obtain the names—this is for Wilkes County you are speaking of, just for Wilkes County?

A. Yes. As I remember it, the men who were selected were the political leaders, chairmen of the political parties, and the superintendent of public instruction, public schools,

C. B. Eller; the now president of the Bank of North Wilkesboro, J. R. Hicks, he was one of them. I just can't now offhand remember; I didn't carry that in my head.

Q. These were gentlemen whom you asked to submit names to you?

A. Yes.

Q. And they did?

A. Yes.

[fol. 79] Q. Were there any other people whom you asked to submit names to you, other than those you have mentioned?

A. Yes, we conferred with others, prominent citizens around over the country, both he and I.

Q. You mean both Mr. Farr and yourself?

A. Yes, sir, the Jury Commissioner.

Q. Were there any other persons you conferred with that you recall?

A. Well, I don't know right now.

Q. And these individuals whom you conferred with and asked to submit names to you then did submit names; is that correct?

A. Yes.

Q. And you had them classified as to whether they were Republican or Democrat to make sure you had an equal number?

A. No, no. We never regarded that as being an equal number. We just took the Democratic list and the Republican list and whether they wholly matched or not we just took what they sent in. They were about the same number.

Q. They came in in about equal number?

A. Yes.

Q. Then you just placed the names these people furnished you in the box; is that correct?

A. Well, I won't say that we just placed them in the box at that time. I don't know whether that list, whether I sent it here to Greensboro or not. The most of the lists were [fol. 80] typed here and sent to me there. As to Wilkes County, I just don't recall whether it was submitted to the Clerk and typed here or I typed it.

Q. Did you get any information—I am speaking now of Wilkes County—with regard to the names of people who

were submitted to you other than their names and addresses?

A. I didn't understand that question.

Q. I think you have indicated that as far as Wilkes County is concerned you asked a number of prominent citizens in Wilkes County to submit names to you of people to go into the jury box?

A. Yes.

Q. Did they give you any other information with regard to these individuals other than their names and addresses?

A. Well, of course some of them—Oh, I can't remember the details that way; I wouldn't know.

Q. You don't have any written——

A. They wouldn't submit me names of persons they didn't think were fit to go into the jury box. They weren't men of that character.

Q. But all they gave you were the names and addresses; is that correct?

A. Well, I won't say that's all. I suppose it's all; I don't see what else they would give me.

[fols. 81-169] Q. You don't have any information in the files of the Wilkesboro Division which would give any further information about the names which were put into the jury box?

A. Well, I don't know whether I have or not.

Q. Do you know about how many jurors went into the box for the Wilkesboro Division from Wilkes County, how many names went in?

A. No, I don't remember that exactly.

Q. Did you have any role in selecting names to go into the Wilkesboro Division other than Wilkes County?

A. None at all.

Q. That was entirely done here from Greensboro?

A. I suppose it was. I didn't have anything to do with it.

[fols. 1-65] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, GREENSBORO DIVISION

Criminal No. 4320-G

UNITED STATES OF AMERICA,

vs.

JUNIUS IRVING SCALES, DEFENDANT

Before United States District Judge Hon. Albert V. Bryan and a jury

EXCERPTS FROM TRIAL TRANSCRIPT

(April 11 through 22, 1955)

APPEARANCES:

EDWIN M. STANLEY, Esq., United States District Attorney,
ROBERT L. GAVIN, Esq., Assistant United States Attorney,
WILLIAM F. O'DONNELL, III, Esq.,
BERNARD V. MCCUSTY, Esq.,
JOHN J. KEATING, Esq., Department of Justice,
Special Assistants to the Attorney General for the United States.
DAVID REIN, Esq., for the defendant.

[fol. 66] The Court: Could you sit on the jury and make a fair and impartial decision on the question of whether or not the Communist Party is an organization that advocates the overthrow of the United States by force and violence?

Mr. Crawford: From what I have learned, from reading about Communism, I might not be able to, sir.

The Court: Could you sit on the case and decide it according to the evidence?

Mr. Crawford: Well, I would have to, sir.

The Court: What is that?

Mr. Crawford: Yes, sir.

The Court: : You feel you could give a fair and impartial [fols. 67-72] trial to both the United States and the Government according to the evidence and according to the law?

Mr. Crawford: I feel somewhat prejudiced towards the Communists. That is what I mean, Judge, from what I have read and what I know about the organization.

The Court: You feel a prejudice based on what?

Mr. Crawford: Communists, as I understand it, do not believe in God. I do. They don't believe in our form of government and our form of life and I like it.

The Court: If those are its purposes then you would be prejudiced against it?

Mr. Crawford: Yes, sir.

The Court: Could you entertain a free mind in determining whether or not they are its purposes?

Mr. Crawford: I will try, sir.

[fol. 73] The Court: If you came to the conclusion that the defendant that is here was guilty, or was not guilty, came to the conclusion that he was not guilty, would you hesitate to return a verdict of not guilty because of possible embarrassment to you?

A Juror: I think I would.

The Court: What is that?

A Juror: I think I would.

The Court: Well, that would be on account of your employment or business association?

A Juror: Embarrassment and—no, wouldn't effect my employment.

[fols. 74-112] The Court: Would you be embarrassed in your employment or business association?

A Juror: No, sir, I don't think so.

The Court: Family or in what way would it embarrass you?

A Juror: Well, I can't tell you.

The Court: Would it embarrass you in your church or club or your other associations?

A Juror: I just wondered if it would possibly.

The Court: You would not be willing to follow your own conclusions regardless of the consequences?

A Juror: Sure. I would try to do that.

The Court: Would you give a fair and impartial verdict regardless of what embarrassment might be?

A Juror: Certainly I would try to; yes, sir.

The Court: Do you have any reason to think that the em-

barrassment would be such that would prevent you from giving a fair and impartial verdict?

A Juror: Well, no, I wouldn't say that. I don't think so.

[fol. 113] The Court: I want to know if you have any reason that would prevent you from giving a fair and impartial trial on that question to both the Government and the defendant.

A Juror: I am afraid I do.

The Court: You could not decide that point from the evidence alone?

A Juror: I would like to but I am not too sure.

The Court: It is because you have an opinion on the subject?

[fols. 114-191] A Juror: Yes, sir.

The Court: Regardless of that opinion, could you go into the jury box and decide the question according to the evidence and the law as given to you by the Court?

A Juror: I would try, sir, yes, sir.

[fols. 192-233] COLLOQUY BETWEEN COURT AND COUNSEL RE PRODUCTION OF STATEMENTS

The Court: My practice has been to require the production of the statements, if and when the witness is called to the stand, so that the defendant may have the advantage of knowing of any prior inconsistent statement that the witness may have made so that the defendant may ascertain whether or not previously he has made a statement from what he is testifying to. That requirement, plus the requirement that the Government give the names of the witnesses to the defendant puts the defendant in as good a position as the Government is. That has been my general practice on it.

[fol. 234] Mr. Stanley: Oh, I do not think we would have any objection, if we were trying a liquor case here, where an officer, A.T.U. officer went out and raided a still and just related to that one case, and he testified, if he did make a written statement on it, and wanted to see it, and see if it was consistent to what he testified to, if the defendant wanted to see, I don't think the Government would have any

objection to that, but we are here dealing with a thing with much deeper——

The Court: Would not the defendant be entitled to know and would not the Government want him to know if a witness has made a statement different from the one he is tes- [fols. 235-276] tifying to?

Mr. Stanley: He can ask him on cross-examination. That is the purpose of cross-examination.

The Court: Yes, but if the Government knows that he is making a different statement from what he made before, the Government itself would want that corrected.

Mr. Stanley: It would be the Government's duty to so inform the Court and defendant and I assure the Court we will so do that. It would be no inconsistent statement so far as the Government can make any determination—it will be entirely consistent with everything that is heretofore done, but, you see, you deal in reports that may go over a period of years. You deal not only with this defendant but with many other individuals.

The Court: I think that can be worked out practically.

[fols. 277-285] JOHN LAUTNER was called as a witness by counsel on behalf of the Government, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. O'Donnell:

[fol. 286] Q. Mr. Lautner, did there come a time when you became a member of the Communist Party of the United States?

A. Yes.

Q. When did that take place?

A. In 1929, November, thereabouts.

Q. Would you describe just briefly the circumstances surrounding your becoming a member of the Communist Party?

A. Well, I moved to New York from Ohio in 1927, and I got associated with activities in New York in a dramatic club, and in 1929 I was asked to join the Communist Party by some of the officials of this club.

Q. Did you become a member?

A. Yes.

Q. How long did you remain a member of the Communist Party?

A. Up to the 17th of January in 1950, with the exception of the time I was in the armed forces.

[fols. 287-288] Q. And what schools were you assigned?

A. In the spring of 1930 I was assigned to a national training school of the Communist Party organized by the Hungarian Nationalist Bureau of the Communist Party.

[fol. 289] Q. What did you do in the school?

A. I studied the subject matter, the subject matters that were given at this school, such as, Marxism-Leninism, Political Economy, Dialectical Materialism, the Decisions of the Sixth World Congress of the Communist International, the Paris Commune, the Party Problems, and similar subject matters.

Q. Were you given a course in the history of the Russian Revolution?

A. Yes, and the history of the Communist International.

Q. In connection with this school, did you use any literature?

A. Yes.

Q. What, would you name some of the literature that was used in connection with this school?

* * * * * * *

[fol. 290] Q. Mr. Lautner, I will show you what has been marked as Government's Exhibit for identification No. 1. It purports to be Manifesto of the Communist Party, and ask you if you can identify this document.

A. Well, this is a copy of the Communist Manifesto, the like of which we had in that school in 1930, but not the exact copy because this copy is published by International Publishers and this is the sixth and seventh printing in 1935, a hundred thousand copies.

Q. Does this document that I have just shown you, Government's Exhibit No. 1, contain the same material as was [fols. 291-292] contained in the Communist Manifesto studied by you at the school?

A. Yes.

[fol. 293-307] Q. Subject to the time that you used the Communist Manifesto in the school in 1930, did you use it again in the Communist Party?

A. Yes.

Q. When or——

A. In, throughout the years of 1930, later on in 1946, '47, and '48, particularly in 1948 because it was the centennial celebration of the Communist Manifesto and discussions around the Communist Manifesto took place in Party councils and of the freshness and of the validity of the Communist Manifesto as to its application today, right today, in 1948 was emphasized and re-emphasized by Party leaders like William Z. Foster and others.

[fol. 308] A. In 1930, after graduation from the training school, around the beginning of July or the end of June in 1930, I was sent to Detroit, Michigan, as District Secretary of the Hungarian National Bureau in Detroit, Michigan.

Q. In this position were you on the payroll of the Communist Party?

A. I was a full-time functionary and on the payroll of the Communist Party.

Q. How long were you a full—for how long a period were you a full-time functionary of the Communist Party?

A. Up to the time I left the Communist Party in 1950, January.

[fol. 309] Q. Thereafter did you receive another position in the Communist Party?

A. Yes. In 1932 I came back to Cleveland, Ohio, District Secretary of the Hungarian National Bureau in Cleveland, and one of the editors of a daily Communist paper in Cleveland, Ohio.

Q. Thereafter did you receive another position in the Communist Party?

A. Yes, in 1933 for awhile I was on the District Language Department in the Communist Party in New York. Then in 1933, fall, I got an assignment to Section Organizer in—— of the Communist Party in New York, and I functioned in that capacity up to about May, April of 1936.

Q. Thereafter did you have another position?

[fol. 310] A. Yes, I became a District Organizer of the

Communist Party from April, 1936, to the end of 1940 in the state of West Virginia. I then went to the National Training School in New York, and after graduation from that, I was assigned to their Nationality Groups Commission of the Communist Party and Secretary of the Hungarian National Bureau, and I functioned in those capacities up until the time I was drafted into the Army.

Q. When were you drafted into the Army?

A. In November, 1942.

Q. How long did you serve in the Army?

A. I was in the Army thirty-one months; twenty-five months overseas.

[fol. 311] Q. Now with regard to the Communist Party, what did you do, if anything, after you returned from the military service?

A. I reported back to the national headquarters at 35 East 12th Street, to the National Secretary of the Political Association, Communist Political Association. At that time John Williamson.

Q. When you reported there, what happened, if anything?

A. I was assigned to read certain documents. The Duclos letter, the draft resolution, the preconvention discussion articles, Foster's letter to the National Committee and similar documents dealing with the crisis and the American—in the American Communist Party.

* * * * * * *

[fols. 312-318] A. I was reassigned to the Nationality Groups Commission of the Communist Party and National Hungarian Bureau Secretary and I served in that capacity until the end of 1945. I became sick for awhile. Then in '46, somewhere round about there or thereabouts, I was assigned to take charge of the Communist Party members in the building trades in New York. I functioned in that capacity up to the early spring of 1947. For a few months I was assigned to the New York water front on concentration work there, and in May, 1947, I was assigned as head of the New York State, the Review Commission of the Communist Party, and I functioned in that capacity, and in addition to that in 1948, September, I was assigned also to the National Review Commission of the Communist

Party, and I functioned in these two capacities up to the time I left the Communist Party on the 17th of January, 1950.

[fol. 319] By Mr. O'Donnell:

Q. Now, directing your attention to the year 1940, did you attend a National Training School of the Communist Party?

A. Yes.

Q. And where was that school held?

A. That school was held in New York City. It was one of the floating schools where we met from day to day in a different place.

Q. And was this—this was a Communist Party School, of course?

A. Yes. This was the highest National Training School of the Communist Party.

Q. Prior to this school, I think I may have skipped something here—did you attend a Communist Party School earlier?

A. I——

[fol. 320] Q. Subsequent to it?

A. I organized one in Cleveland, Ohio, and I had new members classes in New York in the 1930's, and then this 1941 National Training School.

Q. In connection with these classes you taught in—during the 1930's, can you name some of the books that were used as the basis of instruction, if they were used?

A. Yes.

Q. What were they?

The Witness: We used first of all "Why Communism." We used "Peters Manual on Organization." We used a Little Lenin Library Series, such as, "Foundations of Leninism," "Problems of Leninism," "What Is To Be Done," "Left Wing Communism," "State and Revolution," "The Program of the Communist International," Bittleman's Pamphlet, Milestone's History of the CPUSA. We used a special ten-volume edition of the Selected Works of Lenin. We used a two-volume edition of Leninism by [fol. 321] Joseph Stalin, a letter to the American workers, and all the Little Lenin Library Series that were available and printed by the mid 1930's up till about 1936.

A. This is "Foundatons of Leninism" by Joseph Stalin, International Publishers, ten cents, copyright 1939, International Publishers Company, Incorporated, second hundred thousand. This is a 1939 edition but the contents are the same as the Little Lenin Library edition which was available in earlier editions.

Q. Was this book circulated, distributed during the period of your membership in the Communist Party?

A. Yes. Throughout my membership in the Communist Party.

Q. Does this contain the substance of the material that you taught in schools?

A. Yes.

[fol. 322] Q. That you taught?

A. Yes.

Q. I will show you what has been marked for identification as Government's Exhibit No. 6, which purports to be "Problems of Leninism" and ask you if you can identify that.

A. Yes. This is the Little Lenin Library Volume Nineteen, "Problems of Leninism" by Joseph Stalin, International Publishers, 381 Fourth Avenue, New York City.

Q. And you used it in the schools that you taught?

A. Yes.

Q. And it was taught to you in the schools?

A. Yes, sir.

Q. I show you what has been marked as Government's Exhibit No. 7 for identification, "State and Revolution" and ask you if you can identify that.

A. Yes. This is "State and Revolution". This is a special edition by International Publishers, third printing, 1935, a hundred thousand copies, part of the Little Lenin Library edition which was used and taught in Communist Party classes where I attended as a student and a teacher.

Q. I will show you what has been marked as Govern-
[fols. 323-328] ment's Exhibit No. 8, "Left Wing Communism", and "Infantile Disorders".

A. This is the Little Lenin Library edition by V. I. Lenin, International Publishers, Fourth Avenue, New York. That was used in the Communist Party Schools where I was taught and where I was teaching.

Q. I show you what has been marked as Government's Exhibit No. 9, which purports to be "What Is To Be Done".

A. Yes, this is the Little Lenin Library, Volume 47, "What Is To Be Done" by V. I. Lenin, which was used in classes where I was taught and where I was teaching in the Communist Party.

Q. I show you what has been marked as Government's Exhibit No. 10 for identification which purports to be "Imperialism, The Highest State of Capitalism" and ask you if you can identify that.

A. Yes. This is Little Lenin Library, Volume 15, copyright 1939, International Publishers. However, the Little Lenin Library was also published before 1939 and was used in classes where I was taught and where I was teaching.

[fol. 329] By Mr. O'Donnell:

Q. You refer to the "History of The Communist Party of the Soviet Union"—I don't know what— would — explain what that was?

A. That book, "History of The Communist Party of the Soviet Union (Bolshevik), is the authorized history of the Russian Communist Party, authorized by the Central Committee of the Communist Party of the Soviet Union, and it was distributed through the Party over here in, from 1939 on, a mass distribution of a hundred thousand was made at the beginning, additional hundreds of thousands were printed later on. The whole Party, as such, was urged to organize the widest possible distribution and studies of this book as guide for the American Party.

Q. Was this book circulated and distributed throughout the Communist Party during the entire time you were in the Communist Party?

A. It was circulated and studied throughout the time I was in the Communist Party from 1939 on.

[fols. 330-334] Q. Did you use this book in the courses that you taught during the time you were a member of the Communist Party?

A. Yes.

In 1941 in the National Training School. In '46 and '47 and '48 while I was teaching classes after the reconstruction of the Communist Party.

[fol. 335] Q. Would you state the courses you took?

A. In that '41 National Training School, we had Marxism-Leninism, Political Economy, American History, The History of the CPSU, Party Organization, Party Problems, Problems in China, and we had a course in science. We had a Party Problems in the Trade Union Movements, and other subject matters.

. . . . . .

A. In the course of Marxism-Leninism we used the Lenin Selected Works. We used the Little Lenin Library editions. [fol. 336] Q. Were these the same books that were just introduced or copies of them?

A. Yes, copies of them.

Q. Without repeating the numbers——

A. That is correct. We used Leninism by Stalin. We used The Program of the Communist International. We used Marxist Capital. We used the Party resolution that was adopted at the 1940 convention. We used Strategy and Tactics. We used the Theory of the Proletarian Revolution. We used the Dictatorship of Proletariat. These are three red-covered books with excerpts in each book organized around different subject matters and dealing with theory and other material that we used.

[fols. 337-339] By Mr. O'Donnell:

Q. Mr. Lautner, I will show you what has been marked as Government's Exhibit No. 13 for identification which purports to be a book marked, titled, "Strategy and Tactics" and ask you if you can identify that.

I might ask you preliminarily, was that one of the books used by you in connection with the schools and studies of the school?

A. Yes. The "Strategy and Tactics" of the Proletarian Revolution, International Publishers, New York, copyright 1936; it was used, studied.

Q. I show you what has been marked as Government's Exhibit No. 14 "Dictatorship of the Proletarian".

A. "Dictatorship of the Proletariat", International Publishers, New York, copyright 1936, was used and studied in the 1941 National Training School.

Q. I show you what has been marked as Government's Exhibit No. 15, "Theory of the Proletarian Revolution" and ask if you can identify that?

A. Yes. This is the "Theory of the Proletarian Revolution", International Publishers, New York, copyright 1936, used and studied in the 1941 National Training School.

[fol. 340] By Mr. O'Donnell:

Q. Now after you returned from the service, once again, were there—did you attend any meetings of the Communist Party?

A. Yes, I attended the 1945 National Convention and [fol. 341] the first part of the New York State Convention of the Communist Party.

Q. Where was the 1945 National Convention held?

A. In New York City, in a place called Fraternal Clubhouse, which is around 46th Street or thereabouts. It would be Broadway and Sixth Avenue, New York City.

Mr. O'Donnell: What happened at that?

The Witness: The Communist Party was reconstituted. Browder, Earl Browder, General Secretary of the Com- [fols. 342-349] munist Political Association or of the Political Association was removed from this function. His policies were repudiated and the Convention firmly established itself to go back to the basic teachings of Marx, Engel, Lenin and Stalin and he elected at that Committee——

By Mr. O'Donnell:

Q. With regard to this reconstitution and going back to the fundamental principles of Marxism-Leninism, what action did the Convention take?

The Witness: It adopted a constitution and in the preamble it ascertained this basic return to Marxism-Leninism.

[fol. 350] Q. Now, Mr. Bautner, I believe that you previously testified that after you rejoined the Communist Party, 1946, you were thereafter assigned as organizer to the Building Trades Section.

Now, in addition to that position were you assigned any

further duties in connection with the Communist Party or by the Communist Party?

A. In the first place, I didn't rejoin in 1946. I reported back when I came from the Army, came back from the Army, and for awhile, while being in the National Hungarian Bureau and the Nationalities Group Commission of the Communist Party, I was assigned in 1946 to organize the Communist Party membership in the building trades in New York City.

[fol. 351] By Mr. O'Donnell:

Q. What were those duties that you were assigned at that time?

A. To take part in the three-prong program that unfolded at reconstitution of the Party in 1945, that is, the reorganization of the Party, the re-education of the Party membership on a Marxist-Leninist basis and to take part in a concentration policy.

Q. Now, in connection with the re-education in the Party were you given a specific assignment?

A. Yes. I was assigned to teach Communist Party classes in New York City in the years of 19, part of 1946, in 1947 and part of 1948.

Q. Did you carry out this assignment, these assignments?

A. Yes.

Q. Now what was taught in these classes by you, in a general way?

A. The subject matters that I taught were Marxism-[fol. 352] Leninism, Political Economy, Party Organization, Party Structure, Democratic Centralism, Party Discipline.

Q. Did you use any guide in the conduct of these classes?

A. Yes, I used a number of guides. First of all, the books themselves. Then we had a national outline prepared by the National Educational Commission, and also I was guided by discussions and instructions by the New York State School Director, a person by the name of Albert Moreau.

Q. Now what was the title of this class that you used, you referred to outline, I believe.

A. That was the Marxist-Leninist guide that was prepared by the National Educational Commission of the Communist Party.

[fol. 353] By Mr. O'Donnell:

Q. Mr. Lautner, I will show you what has been marked as Government's Exhibit No. 18 for identification and ask you, which purports to be, "Outline on Fundamentals of Marxism" and ask you if you can identify that?

A. Yes, this is one of the guides that we used in those classes in '46, '47 and '48.

[fol. 354] Q. Now you testified that you also used other books in connection with that class and at this time—or those classes over this period—and at this time I will show you Government's Exhibit No. 5 and ask you if you used that; that is, "Foundations of Leninism"?

A. We used "Foundations of Leninism".

Q. Did you continue to use that throughout the membership in the Communist Party?

A. Yes, sir.

Q. And was that used by the Communist Party in their teachings?

A. Yes.

Q. Is the same true of "State and Revolution"?

A. The same is true of "State and Revolution".

Q. That is Exhibit No. 7.

A. "History of the CPSU".

Q. Exhibit No. 12?

A. "Imperialism".

Q. Exhibit No. 10?

A. "Problems of Leninism".

Q. Exhibit No. 6?

[fol. 355] A. "The Communist Manifesto".

Q. Exhibit No. 1?

A. "Left Wing Communism".

Q. Exhibit No. 8?

A. "Left Wing Communism", "What Is To Be Done".

Q. Exhibit No. 9?

A. "The Struggle Against Revisionism".

Q. I show you Government's Exhibit No. 13, "Strategy and Tactics".

A. We used "Strategy and Tactics".

[fol. 356] Q. Government's Exhibit No. 14, "The Dictatorship of the Proletariat"?

A. Yes.

Q. Government's Exhibit No. 15, "Theory of the Proletarian Revolution"?

A. Yes.

Q. These books were used throughout your membership in the Communist Party by the Communist Party in its teachings?

A. That is correct.

Q. Now you referred to teaching the course on Marxism-Leninism and I will ask you this question at this time:

In substance, was the subject of Marxism-Leninism that you taught during this period and was taught by the Communist Party in these schools, was that the same Marxism-Leninism as taught to you in the Training School in 1941?

The Witness: In substance the same was taught on the [fol. 357] subject matter of Marxism-Leninism in '46, '47 and '48 as it was taught in 1930 when I went to Training School and also in the 1941 National Training School.

[fol. 358] The Witness: Marxism-Leninism is the writings and teachings of Marx, Engels, Lenin and Stalin, and its applications in this era, which began about the turn of the century, which era is known as the era of monopoly, capitalism and imperialism. That is the theory and tactics of the Proletarian Revolution in general, and the theory and tactics of the dictatorship of the proletariat in particular. It is the philosophy of the class struggle. It is the enemy of class collaboration and class peace.

[fol. 359] The Witness: The dictatorship of the proletariat is the form of state unrestricted by any law, the decrees are the order of the day as situations and conditions present themselves, and the way it is evaluated by the vanguard of the guard of the working class, the Communist Party.

The Witness: An imperialistic nation is one that subju-
[fol. 360] gates other people, smaller nations, smaller countries, either by force or economic penetration and economic influence and is bent on war and Fascism.

For instance, the Communist Party features that the United States is the leading imperialist nation in the world today.

The Witness: A Proletarian Revolution is when two conditions exist, objective and subjective conditions. Objective conditions are when a Government is in a crisis, when that Government cannot rule by the accepted and practiced ways and rules, when there is a deep economic crisis, or there is a war and when there is a large, say, in a given country, parallel with these objective conditions, if there is a powerful Communist Party, not necessarily numerically powerful but a Communist Party that exerts decisive influence amongst large sections in the key industries that [fol. 361] has a list in addition to that from the lower middle classes and national minorities in a country, and that is capable to give proper guidance and capable to evaluate the situation from day to day, or from hour to hour, when these two conditions exist, the Communist Party under the leadership of the Communist Party itself is ready to take these forces into a decisive battle to bring about a change in the social structure of that society by destroying the governmental apparatus by force and violence and bring about the dictatorship of the Proletariat and pave the way towards Socialism.

By Mr. O'Donnell:

Q. Now you also, you refer to the Communist Party as the vanguard. What is the meaning of vanguard as taught to you in the Communist Party?

The Witness: Of the Proletariat, the leader is the Communist Party, the vanguard of these forces. This vanguard does not share leadership with any other political parties in the course of these events and it is conscious of [fols. 362-385] the fact that it alone, the Communist Party alone, decides and leads these forces.

By Mr. O'Donnell:

Q. Now are these principles which you have just stated, are they found to be documented in any place?

A. Yes.

Q. Where are they found to be documented?

A. They are found to be documented in the writings of Lenin and Stalin and such pamphlets as "Problems of Leninism", "Foundations of Leninism", "State and Revolution", "History of the CPSU", and other documents, statements by Lenin and Stalin.

[fol. 386] Q. Now, Mr. Lautner, you mentioned that during this period you taught at a number of Communist Party Schools, and I would like to ask you at this time specifically if you taught at the Jefferson School of Social Science?

A. Yes. We had a number of Party classes in that school, in that building.

Q. Did you teach the classes yourself?

A. Yes.

Q. And what is the Jefferson School of Social Science?

A. The Jefferson School is a Party Front Organization where they indoctrinate Party members and others who have inclinations to enroll in the school in Marxism-Leninism, Political Economy, and other subject matters.

[fols. 387-388] Q. And when did you teach at the school?

A. In 1947 I had a number of classes in there were section functionaries and the subject matter of Marxism-Leninism, Party Organization, Party Structure and Political Economy.

[fols. 389-393] The Witness: Yes, Your Honor, the Executive Director of the school, David Gold, was a Party leader attending Party or Commission meetings, educational meetings, and in my capacity as security officer and head of the New York State Review Commission, I had meetings with them on the question of security of the building, on the question of—and other problems too—was completely controlled by the Party, the whole institution.

[fol. 394] Q. Mr. Lautner, would you at this time explain the organization of the Communist Party as taught by you in the course of these schools and on the basis concerning which you testified just before the recess, and starting with probably the lowest group in the Communist Party.

Mr. Rein: I am sorry. I did not hear the question.

(The reporter read back the question.)

The Witness: Yes. The basic organization of the Party is the Party Branch. If those members live in a given small area that is known as the community branch, if the Party members work in a specific shop or factory, the Party members there are known as belonging to a shop branch. If there aren't sufficient number of Party members in a given shop, but there are scattered Party members in the same industry in various shops, they are organized into an Industrial Branch. If there is a factory and the Party has no members in that particular factory, they select Party mem-
[fol. 395] bers in a community club or from an Industrial Branch. They organize them into a group and they assign them to concentrate to that shop until they build a Party in that shop. That kind of a branch is known as the Industrial Concentration Branch.

The branch breaks down into groups of three to five members in order to have a better check-up on the members as far as dues, system and attending Party meetings is concerned.

The Party Branch is led by a Branch Executive Committee. The following members of the Branch are eligible to become members of the Branch Executive. The Branch Organizer, the Membership Secretary, the Finance Secretary, Labor Secretary, Press Director, Educational Director or
[fol. 396] Group Captains——

By Mr. O'Donnell:

Q. I might ask you one question at this time, Mr. Lautner.

The explanation that you are giving concerning the Com-
[fol. 397] munist Party Organization, would that be basically the same after 1948 and until you left as it is at this particular time?

A. There was a slight change. First of all the National Committee was reduced from a size of fifty-three to thirteen. The National Review Commission was not elected in 1948 but was appointed, and in addition to this structure of 1948 and underground structure was being built.

[fol. 398] In a larger community where there are a number of branches, community branches, shop branches, industrial branches, branches are given leadership to by

a Section Committee. Members of the Section Committee. The Section Committee is elected by representatives or delegates from the Branches who come to a confer- [fol. 399] ence or a convention once every two years. The Section Committee has the political responsibility and responsibility to the Party for the Party activities in that Section where all these Branches are, and the Section Committee has a staff in order to expedite and carry out the activities of the Party in that particular Section.

On a larger scale, in a state organization or in a district all these city, county sections and branches are given leadership to by a District Committee or a State Committee of the Communist Party. In some instances there are more [fol. 400] than two Districts in a state, like, for instance, in the State of Pennsylvania there is a district, the Philadelphia District of the Communist Party, and then there is a Pittsburgh District over the one district of the Communist Party. In other instances, more than one state belongs to one district organization of the Communist Party.

By Mr. O'Donnell:

Q. Excuse me, Mr. Lautner. I ask you at this time during this period concerning which you are testifying, do you know if there was an organization for the State of North Carolina?

A. Yes, there was.

Q. What was that organization?

A. That was a State Organization and the District Organizer was a person by the name of Bernie Friedland.

A. The District or State Organization has manyfold activities that it has to carry out and in order to function efficiently and to the most advantage of the Party, in larger districts various departments are set up under an Organization Commission in the District The head of the District [fols. 401-403] Organization of the Communist Party is the District Organizer or the State Chairman of the Communist Party's Association or the Organizational Secretary. Then they may have the Literature Director, Legislative Committee Secretary, Nationality Group Commission Secretary, Women's Commission, Review Commission, Secretary Negro Commission, Secretary Labor Commission, Secretary

Educational Committee Director, Youth Commission Secretary, Veterans' Commission Secretary, Press Circulation Director, Cultural Division Organizers, Financial Committee Secretary, Farm Commission Secretary, all these departments and secretaries are supervised and given guidance to by the State Committee and through the State Committee the District Organizer or the State Chairman of the Parties and his close associates, like the Organizational or Executive Secretary of the District, or the State Organization.

The State Committee likewise is elected by a State Convention where delegates from that whole district or state from the lower organizations who were elected delegates come to convention and then they in turn elect a State Committee at the convention who gives guidance and leadership to the whole District, or whole State.

[fols. 404-437] The Witness: Yes, Your Honor.

Now decisions of the National Committee are binding on all Party members throughout the Communist Party in the United States, whether they agree with it or not. They must carry out Party decisions. They can object to it, but they must carry it out and later on they can have a hearing wherever they have a disagreement with a decision along the line.

[fol. 438] Q. Mr. Lautner, was there any change in the basic aims and objectives of the Communist Party during the course of your membership in the Party, that is, from the time you joined until the time you left in January, 1950?

The Witness: As to the basic aims and objectives of the Communist Party, there was no change from the time I joined the Party up until the time I left the Party. Those basic aims are stationary and they are set for this whole historical period which is known as monopoly, capitalism [fol. 439] and imperialism.

The Witness: The ultimate aim of the Communist Party of the United States is when these two conditions, objective and subjective conditions, are given, that I described before, a national crisis, or a war, on one hand, and the ability of the Communist Party to give leadership, to decisive [fols. 440-496] sections of the working class, neutralize other sections of the population, when these conditions are

present, to bring about the destruction by force and violence of the imperialism, monopoly, capitalism and its governments, that is the basic aim and objective of the Communist Party, and through destruction of the state apparatus and power of monopoly, capitalism, imperialism, to bring about Socialism through the dictatorship of the *Totali*tariat.

By Mr. O'Donnell:

Q. Is it applicable in this country, the United States?

A. The United States is the leading imperialist government in the consideration of the Communist Party.

[fol. 497] EXCERPTS FROM TESTIMONY OF JOHN LAUTNER, CROSS

Q. What is the first case you have ever testified in publicly? Was it before the Subversive Activities Control Board?

A. That is right.

Q. And that was in——

A. 1952.

Q. February 7, 1952?

A. '52; that's right.

Q. You were then asked with reference to this same [fol. 498] book, this was a position of Mr. Foster in the position of—and the position of the Communist Party, is that not right, and your answer, Well, according to this book that was the position and that was the thinking of William Z. Foster, but may I add this, that this whole thing that you read is highly speculative and it has no basis and no reality. And the question, Speculative or not, it was the position of the Communist Party, is that not right? And your answer, That is right.

Do you recall those questions and answers?

A. Yes, but after that I found Foster's repudiation and I know about it today.

Q. Oh, you found it after 1952? You didn't know about it?

A. No. After this hearing I checked up and I found his repudiation. I was correct there and I am correct here.

Q. In February, 1952, you did not know of Foster's articles written in 1950; is that correct?

A. That is correct. That skipped my mind, or there was a lapse in my memory, and I checked up and I found his repudiation.

Q. That is the difference that you did not know about it at that time?

A. At that time if I would have known about it, I would have stated so at that time too.

[fols. 499-510] Q. Well, this was some two years after the article appeared?

A. Well, there are too many articles to check up on, but I did after it.

Q. Didn't you also testify in that same hearing that you disagreed with Mr. Foster, as the views he expounded in that book?

A. Yes, I did. In spite of the fact that I didn't have his June article, I disagreed with him, and then later on, he came around and agreed with my point of view.

Q. You testified that you disagreed with Mr. Foster.

A. That is right.

Q. As a matter of fact, you disagreed with him at the time that the book came out, isn't that correct?

A. No, at the time we were discussing it at 1952 in that hearing I disagreed with Foster and I disagree with him today.

[fol. 511] Q. Was it not also the position of the Communist Party that while supporting the election of a broad people's front of government it would also seek to persuade the American people that ultimately Socialism would be a superior economic system to capitalism?

A. Yes.

Q. Was it not also the position of the Communist Party that if Socialism could not be peacefully established in the United States by elections and parliamentary methods, the reason would be that the trusts of the monopolists would try to prevent this by force and violence?

A. That is not so.

Q. What?

A. That is not so.

Q. Now I ask you, Mr. Lautner, referring to your testimony at page 611 and 612 of the transcript of the record in the Lightfoot case, whether or not it is true that when

you were asked that identical question your answer is, That is what the Communist Party said; yes?

A. The question is, Was it not also the position of the Communist Party, Mr. Witness, that if Socialism could not be peacefully established in the United States by elections [fols. 512-516] and parliamentary methods, the reason would be that the trusts and the monopolists would try to prevent this by force and violence.

Q. And your answer?

A. The answer was, That is what the Communist Party said; yes. But, that is not my position.

[fol. 517] Q. You have testified, I believe, on direct testimony about some preparations for an underground organization; is that correct, Mr. Lautner?

A. That's correct.

Q. Isn't it a fact that the purpose of that was so that if the Party, the Communist Party was declared illegal, that there would be a group of people who could conduct a campaign to bring the Party back to legality; wasn't that [fols. 518-553] the purpose of setting up that organization?

A. That was one of the purposes, but the primary purpose was to enable the Party to function under any and all conditions.

Q. You have previously testified when asked that question that the purpose was to bring the Party back to legality.

A. That was what we said to the Party membership; that is correct, but the primary purpose was to enable the Party to function under any and all conditions.

[fols. 554-561] RALPH C. CLONTZ, JR., was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

[fol. 562] By Mr. Stanley:

Q. Now following that conference with the agent of the F. B. I. what did you first do?

A. The first move I made toward contacting the Communist Party was made on September the 9th of '48 when

I addressed a postcard to Junius Irving Scales at his post office box in Chapel Hill, North Carolina. On that postcard I said that I was interested in Communism and that I was a Duke law student. That was the substance of the postcard.

Q. Did you receive any reply from the defendant, Scales, in regard to that postcard?

A. Yes. One or two days later I received a large cardboard box full of Communist literature, "Daily Worker," "Political Affairs," "For an Everlasting Peace For a [fol. 563] People's Democracy," and a large supply of these documents, and then I received a letter approximately September the 13th, dated September the 12th, from Junius Irving Scales in which he stated that he had sent me the literature, expressed gratification at my inquiry and offered, extended me an invitation to visit him in his home at Carrboro, North Carolina.

(The Clerk marked a letter as Government's Exhibit No. 24 for identification.)

A. This is the letter about which I just testified. This signature I know to be the signature of Junius Scales.

Q. Will you read the heading on the letterhead and then read the letter?

A. The heading is "Carolina District Communist Party U. S. A., Post Office Box 2884, Winston-Salem, North Carolina, or Box 62, Chapel Hill, North Carolina."

Over in the left-hand portion it says: "Junius Scales, Chairman."

Then I have on here——

Q. What is the date of the letter?

A. The letter is dated 12 September 1948. The letter is as follows:

[fols. 564-565] "Mr. Ralph C. Clontz, Jr., Box 785, Durham, North Carolina.

"Dear Mr. Clontz, Thank you for your card of the 9th. Under separate cover I have already sent you a rather varied sample of our literature. I hope you will give it close attention. If I can discuss any matter relating to my Party and its program with you in person,

I will be glad to do so. If you so desire, drop me a line in advance. I live at 36 Carr Street, Carrboro, and will be happy to have you call. Sincerely, Junius Scales".

Then at the bottom of the letter there is the printed portion, "For a free, happy and prosperous South."

[fols. 566-569] Q. Did the defendant, Junius Irving Scales, tell you what the "Daily Worker" was, Mr. Clontz?

A. Yes.

Q. What did he say it was?

A. Junius Scales explained to me that the "Daily Worker" was the Party daily newspaper, whereas the "Worker" was the Party week-end edition of the "Daily Worker".

[fol. 570] By Mr. Stanley:

Q. Now, Mr. Clontz, did you later go to Carrboro, North Carolina, and to the home of the defendant, Junius Irving Scales?

A. Yes, I did.

Q. Was there anyone present at this first conference that you had with the defendant, Scales?

A. Yes.

Q. Who was there at that conference besides you and [fol. 571] Scales?

A. When I got to Scales' house, my recollection is only Scales and his then wife, Vera Lacob Scales, were present. After dinner and during the time that the defendant and I were discussing things in the living room, another person came in, one William A. McGirt, known to me as Bill McGirt.

[fol. 572] A. I knew that from Junius Scales' words and from William McGirt's words on that particular occasion. Bill McGirt expressed to me the feeling of exultation that he got when he openly announced to the public that he was a member of the Communist Party and Junius expressed the same sentiment that when he first had openly admitted his Communist Party membership, he had the same feeling of pride that Mr. McGirt had spoken about.

Q. Now what else transpired at that meeting on this [fol. 573] evening?

A. That meeting, Junius Irving Scales inquired into my background, my parents, my general background in the service, my prior schooling, my general outlook on civil rights and other matters of that sort, and he also told me about his background.

Scales told me that he had been born in Greensboro, North Carolina, that his father was a very wealthy Greensboro citizen, in fact, he explained that he had had to live down his rather respectable background in the Communist Party, having an ancestor that had been governor of the State of North Carolina, that his father was a rather outstanding capitalist. Scales told me he was a millionaire. Scales said he had been brought up with private tutors and private governesses and that he had first come in contact with the Communist Party in Chapel Hill. After he moved to Chapel Hill, that he became interested in the Spanish Civil War, and through his interest in the Spanish Civil War he met members of the Communist Party and became interested in what the Communist Party stood for.

At that time he explained to me that he was Chairman of the North and South Carolina District of the CPUSA.

Q. Shortly after the first meeting with Scales did you have an opportunity to see him again?

A. Yes. Right before Christmas as I recall, in 1948, I [fol. 574] went back to Scales' residence on Carr Street in Carrboro at his request to discuss hospitalization insurance with him.

Q. What was discussed at that meeting, if anything, concerning the literature he had previously furnished you?

A. I told Scales that I had read the literature very carefully. He said that he was gratified that I had read it, that he had sent me the literature on a hunch, that he had just gotten in a large shipment from Communist Party Headquarters in New York and that after meeting me and talking to me, he was certain that his hunch had been good. He told me that he was at that time starting to form a publishing company of some sort in North Carolina, and asked me about the advisability of having a corporation or a solely-owned partnership.

Additionally then I posed to Scales the question, If you can have a publishing company and if Communism is the better form of government and the better way of life, why can't we bring Communism here to the United States by educating the people, by showing them that this is the best form of government?

Scales answered me that that was entirely fallacious, that that would never work, that in the first place the Government of the United States owned all the media of communication, the newspapers, the—I don't believe he mentioned television—but the newspaper and radio and other similar mediums; they controlled the schools, the other [fol. 575] institutions of government and that they would not permit the masses of people to learn the truth about this Communism, that in order to get the truth to the people you would first have to destroy the Government and destroy the mediums of communication control and destroy the institutions of Government, that Stalin and his followers had proved conclusively that ideas alone would never change the form of government or would never do anything. He said that it would be nice if revolution happened automatically but, he said, that unfortunately they didn't, that a small militant force had to bring about a change in government by revolution.

I recall he said that that is where we, the Communist Party, come in. He said that Engels, the philosopher of some kind, that collaborated with Karl Marx, had felt that when the revolution comes about, Government would just disintegrate and the people would just sort of run things very loosely. He said that Lenin had proved that that didn't follow, that when the revolution took place in the Soviet Union in Russia, that Lenin had taken the police power, that the Czar had used that police power to consolidate his position and as Junius put it, to protect the masses of the people from the encroachment of the foreign capitalist countries that would try to come in and prevent the revolution.

Scales said, and it made quite an impression on me, that force is the only answer, that ideas alone can never accom- [fol. 576] plish anything.

That was the substance of our conversation at that time.

Q. Did he say about at that time how he was going to bring this force into play?

A. At that particular time?

Q. Yes.

A. Only generally.

It is my recollection that he simply said there would have to be a militant force, namely, the Communist Party, to unite the two classes of people in this country that would be used in the revolution, that is, the Negro nation and the working class or the Proletariat.

Q. Now at that meeting were you given any further literature, booklets of any character?

A. Yes, it is my recollection that it was at this meeting that he sold me "Problems of Leninism", a book by J. Stalin. Also I believe he gave me "State and Revolution", a special paper-back edition, and a publication called "New Times", and I also believe he gave me a copy of "For An Everlasting People, For A People's Democracy".

"The Clerk so marked the books as Government's Exhibits 25 and 26 for identification.)

* * * * * * *

[fol. 577] Q. Have you your initials on them so you can identify they are the identical books given to you by the defendant, Junius Irving Scales?

A. Yes. The book "State and Revolution" was in my personal possession from the time Junius Scales gave it to me until I surrendered it to the Government January the 28th, '55, at which time I initialed it and put the date 1/28/55.

This other pamphlet by Joseph Stalin, this other book, rather, by Joseph Stalin was likewise initialed by me on that same date and frankly, there couldn't be another book [fols. 578-582] exactly like it due to the fact that this was involved in a flood during the time I was up in New York City and was quite damaged and this has also been in my possession since it was sold to me by Junius Irving Scales on the occasion in question.

Mr. Stanley: We offer in evidence Government's Exhibits 25 and 26.

Mr. Rein: I have no objection.

The Court: Let them be admitted.

(The Clerk so marked Government's Exhibits Nos. 25 and 26 in evidence.).

[fols. 583-594] Q. Mr. Clontz, did Mr. Scales tell you, when he gave you these books, as to what you were to do with them and the purpose of giving them to you?

A. Yes, I was told to study the books that he gave me to learn more about his Communist Party and to learn the principles of what he called Marxism-Leninism.

[fol. 595] A. During that period, thereafter, I met with Scales as frequently as could be possible, continued my discussions with him. I was instructed by Junius to read the "Daily Worker" daily and in fact, he sold me a subscription to the "Daily Worker," telling me that he got a commission on the subscriptions by taking it through him and to the "Worker", and——

. . . . . .

[fol. 596] Q. What were you to do with "Political Affairs"?

A. I was to study that and that would give me along with my instructions under Mr. Scales, the Party theory and the Party line on various things that appeared. Additionally I was given by Scales on frequent occasions a newspaper called "For Everlasting Peace For A People's Democracy". This was published in Bucharest, was the official organ of the Cominform sent out to Communist Parties all over the world, according to Scales, was written in English but was published actually in Bucharest. And during that period I met with him, discussed the various teachings of Marx and Engels. I remember particularly around the middle of 1949 Scales gave me a book, among other booklets he gave me, which was personally autographed by William Z. Foster. This was titled "The Twlight of Capitalism". Scales didn't comment particularly about the book other than the dedication. In the dedication Scales pointed out to me that William Z. Foster, the National Chairman, had said that his great grandson, whose name I don't recall, would live in a Communist United States of America.

[fol. 597] Q. I hand you the Defendant's Exhibit No. 1. Is that a copy of one of the books Scales gave you?

A. This is not the identical book Scales gave me, but this is a duplicate of the edition he gave me.

Q. Would you read the dedication?

Mr. Rein: Object, Your Honor. It has already been read in evidence. This is just repetitious, Your Honor. It has already been——

Mr. Stanley: I want to know if this same dedication in this book was in the book given to him.

Mr. Rein: I will so stipulate.

Mr. Stanley: You will so stipulate?

Mr. Rein: Yes.

Mr. Stanley: Would you read it?

Mr. Rein: Objection, repetitious, Your Honor.

The Court: I will let him read it.

The Witness: "To my great grandson, Joseph Manley Kolko, who will live in a Communist United States."

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[fol. 598] The Witness: Well, on numerous occasions in my discussions with Scales, he would lay down the basic strategy of the Communist Party. That was given to me [fol. 599] certainly during the year 1949. I can't recall the exact time because it was given to me on such frequent occasions. Basic strategy of the Communist Party was to bring about a violent revolution through utilization of two major forces. The first was what he termed the Proletariat of the working class.

Now towards the working class, he said that the Communist Party was the natural leader of the working class, and that the Communist Party must lead the unions in their efforts. He said the big difference in the Communist Party and a union is that a union just saw the next hill, whereas the Communist Party knew the over-all goal which was a Communist United States, and, therefore, had more foresight and could direct activities more, so there was a definite program of—he didn't call it infiltration—of participation in union affairs by the Communist Party.

The second force that he said they would use was that of the Negro nation. Now Communists defined the Negroes in

the South, what they call the black belt, as a separate nation all their own, and he says that the Negroes are oppressed by the blood-sucking capitalist. As a matter of fact, when we [fols. 600-601] were discussing why you couldn't do it by reform and education, that was one of the things he mentioned, that there was the eternal struggle between the working class and the Negroes and the blood-sucking capitalist monopolist. He said that they were oppressing the Negro people in the South and all over the United States and that the Communist Party was going to use these two forces to bring about the revolution guided by the Communist Party as the vanguard.

By Mr. Stanley:

Q. What do you mean by "vanguard"?

A. Vanguard, he explained to me to mean the leaders, those in the front of the fight.

[fol. 602] By Mr. Stanley:

Q. During this period did you have any discussion with the defendant, Scales, in regard to the relationship of the Communist Party in North Carolina, to the Communist Party of the United States of America, and then the relationship of the Communist Party of the United States of America to the Communist Party in Russia and, if so, explain?

A. Yes. I did.

Junius explained to me that he was District Chairman of the Communist Party District for the two Carolinas, that the district was an integral part of the Communist Party U.S.A. Now he explained that actually there was not any visible tie between the Communist Party in all countries, but that the Soviet Union was regarded as the mother country and that the Soviet Union controlled generally the policies handed down by the Communist Party here. He said it was only natural since the Soviet Union was the mother country of the working class that the Soviet Union would support the working classes in other countries throughout [fol. 603] the world.

Q. Was any discussion during this period about the effect, that is, with the defendant, Scales, about the effect of an

economic depression in this country with relation to the attainment of the goal that you have related here?

A. Yes, there was——

. . . . . .

Mr. Rein: In other words, these discussions took place some time in 1949?

Mr. Stanley: That is my understanding. That is correct.

The Witness: Yes.

[fol. 604] By Mr. Stanley:

Q. Go ahead.

A. And on other occasions during that period he explained to me that he and the Communists view depressions with mixed feelings. He said it is true that some of the Communists themselves might be out of work, but actually with a depression the Communist Party could reach people that they otherwise couldn't reach, and that for the purposes of the revolution they would welcome a depression and, in fact, they predicted during '49 that a depression would come very quickly.

Q. Now, Mr. Clontz, towards the end of the year '49 do you recall going to the defendant's home in Carrboro again where your over-all work that you had been performing that year was discussed?

A. Yes. I recall one occasion towards the end of 1949, Scales had just recovered from an appendectomy operation, and I met him in Carrboro, North Carolina, at his residence [fol. 605] and had certain conversations with him.

. . . . . .

He also previously had taken a position in his discussions with me that I should not become an actual member of the Communist Party because that would jeopardize my opportunity to get past the bar exam. We had had some Communist Party—Communist Party had had some rather unfortunate experiences with students who were members of the Communist Party both at Carolina and one graduate student at Duke, but on this particular occasion Scales—that he had pretty much changed his mind, that he felt that by

the time I started taking the bar exam in August of 1950 that things would pretty well have changed, that the hysteria that had been gripping the people would pretty much have quieted down. He said that he had just been reading [fols. 606-608] some of Lenin's writings back in 1917 and 1918 and that this was one of the things that he based his opinion on. He commented that Lenin had written about World War I, that World War I was purely capitalist war power and that the Communist Party should oppose it, that around the first of the year of 1917 Comrade Lenin, as he put it, had been very optimistic about the chances of the Communist Party in the Soviet Union to bring about a revolution even though they were a tiny minority.

He commented that in July of 1917 the Czar had driven the Communist Party of Russia underground and had outlawed them. He said that that very next October the Communist Party, the Bolsheviks, had managed to bring about the revolution. Scales said that he saw a perfect analogy here in this country. He said that as soon as the capitalists drive us underground, there will be a revolution. He said that if a depression came along that would accelerate it still further and would make the job easier.

[fols. 609-615] A. Yes. This is the study course of the Communist Party, the Working Class and Industrial Concentration. This is the particular study course that was personally given me by Junius Irving Scales the latter part of December of 1949. This was in my possession until I turned it in to the Government on January the 17th, 1950.

Q. And bears your initials?

A. Bears my initials for identification.

[fol. 616] By Mr. Stanley:

Q. You may proceed.

A. In fact, I actually discussed with the defendant subsequent to this occasion what Mr. Aptheker, who is in the courtroom, said at that time. Mr. Aptheker stated that the Negroes in the South were still in slavery, that the same situation existed as far as the Negroes were concerned now that had existed in the 1860's, that they were being oppressed by the capitalists and that the capitalists were fast losing their ability to find answers to their prob-

lems, that as they continued being unable to answer the capitalist problems the Negroes and working class people [fols. 617-618] who loved freedom would have to revolt. Addressing himself to the matter of revolution, Mr. Aptheker said that a revolution in the United States was a certainty, and a necessity and he said the kind of revolution he had in mind was the kind of revolution that took place in Russia.

During the discussion period Mr. Aptheker was asked whether one in the Soviet Union could have gotten up and made a speech advocating capitalism and whether it was asked—was asked what would happen to one that did that. Mr. Aptheker answered and said first of all there is no point in having discussions in the Soviet Union about capitalism because in the Soviet Union we knew the truth and since we know the truth, that is, that Communism is the best system, it is best that it not be discussed about capitalism. He said furthermore that the adherents of capitalism had been executed at the time of the revolution and there was no one left alive in Russia that could get up in a meeting and discuss the relative merits of capitalism as opposed to Communism.

After this meeting Junius Scales——

[fol. 619] By Mr. Stanley:

Q. Now, Mr. Clontz, did I understand you to say a few minutes ago that after the Aptheker meeting that you discussed the meeting with the defendant, Scales?

A. Yes, I did.

The next day or two or three days later I discussed this with him. He commented that Herbert Aptheker was one of the scholars of the Communist Party and he said that it was one of the clearest statements of Marxist teachings that we would find. As a matter of fact, I wrote, not the defendant but Herbert Aptheker at the behest of the defendant, and asked him for a copy of the text of his speech. He answered me that he didn't have a text and he sent me instead some issue of "Political Affairs" and said that I would find the basic teachings he had given in his speech in the issue of "Political Affairs" he sent me.

[fol. 620] A. Yes. The next time after that that I saw

Scales was on January the 17th, 1950. Now by that time I was seeing Scales two and three times a week, but the meeting of importance that stands out in my mind was the January 17th meeting.

Q. What happened?

A. The reason is that on January the 17th, 1950, I joined the Communist Party with, of course, the prior knowledge and approval of the Government, of the F.B.I. At that time I met with Scales at his home and combination office in Carrboro, North Carolina. He informed me that he had discussed my situation with the Communist Party leaders in the North Carolina, South Carolina District and also with the Durham local club in Durham, North Carolina, that he had explained to them that he did not wish to reveal my identity to the local club because he felt that there was an informant in the Communist Party over there in Durham that might report me to the F.B.I., and for that reason, for purposes of security, he wished to have me become a member-at-large of the Communist Party.

Scales said that it was quite an honor to become a member-at-large, that there were only three of those in the two Carolinas and that the purpose was to protect my identity [fol. 621] so I would not be prevented from taking the bar examination that was approaching in August of 1950.

At that time I was officially taken into the Communist Party. I asked Junius Scales for my Party card. I was told that the Party cards had been done away with quite some time ago as a matter of security, that I would be given no identification whatsoever as a member of the Communist Party, but he did in fact give me a receipt which I paid him my initiation dues and my Party dues on January the 17th.

(The Clerk so marked a slip of paper as Government's Exhibit No. 29 for identification.)

[fol. 622] By Mr. Stanley:

Q. Now at that meeting did the defendant, Scales, give you anything or sell you anything or give you any instructions about your Party membership?

A. At that time Junius Scales said that he would con-
[fol. 623] tinue to tutor me personally in the principles

of Communism that would prepare me to be a member, or would help me be a better member of the Communist Party.

He instructed me to continue in my stuides in Marx and Lenin, gave me a study outline which he said that he personally had prepared. This study outline was based, he said, on a book titled, "The Foundations of Leninism". This book I had purchased from him some time before, and, in fact, the book contained a portion of "Problems of Leninism", a Government Exhibit No. 26. He told me to study "Foundations of Leninism", and the questions he had prepared to use as a guide and that we would get together and discuss the various questions in the outline.

[fol. 624] Q. I hand you this paper and ask you what it is?

A. This is the study questions on "Foundations of Leninism".

Mr. Rein: Does that have an exhibit number?

Mr. Stanley: The paper I am handing has been marked for identification as Government's Exhibit No. 30.

The Witness: These are the study questions about which I testified that I received from Junius Scales at Carrboro, North Carolina.

(The Clerk so marked the paper as Government's Exhibit No. 30 for identification.)

By Mr. Stanley:

Q. What were you told by Scales to do with those?

A. I was told to read these questions over and to use these as a guide in studying the "Foundations of Leninism".

Q. Will you read over the questions that are contained on that questionnaire, please, Mr. Clontz?

A. Title "Study Questions on Foundations of Leninism." No. 1. How are the times when Lenin lived and worked different from the times of Karl Marx?

No. 2, Is Leninism the same as Marxism? Historical roots of Leninism. The second subdivision of No. 1. Why can't the unions by themselves solve the problem of the workers under the conditions of imperialism? No. 2. Do imperialist

[fol. 625] wars make the capitalists stronger? If not, why do they fight?

No. 3. Why are the capitalists cutting their own throats when they oppress the colonial people of the world?

No. 4. Why is capitalism bound to go?

No. 5. Why did the working class revolution take place first in Russia?

No. 6. Is the United States an imperialist country? What nations does it oppress? And a third section heading, Method, No. 1, What was wrong with the world Socialist organization the Second International during the years before the First World War? No. 2. Can the workers establish their one rule if they are in a minority in a country? No. 3. How can a Party be sure its theory and policies are right?

Next section is on theory. No. 1, What is a theory? What purpose does it serve in the working class movement? No. 2, What is meant by the idea of the Party "tailing behind" the working class and the unions? Has the Party in the United States ever done this? No. 3, Stalin outlined the "Three Thesis of the Proletarian Revolution" twenty-five years ago. Does it sound as true now as it did then? How? No. 4. How does a Bourgeois democratic revolution become a Socialist revolution? No. 5. What conditions have to exist in a country before there can be a successful revolution? No. 6. Why was China the weakest link in the imperialist chain today?

[fol. 626] Next section. The dictatorship of the Proletarian. No. 1, Once the workers establish their one rule, what is the life and death problem before them and how can they solve it? No. 2, What makes the dictatorship of the Proletariat the most democratic government in history? Compare the dictatorship of the capitalist class in the United States today with the dictatorship of the Proletariat in the Soviet Union. No. 3. What are the Soviets and how do they work under Socialism?

Next, the peasant question. No. 1. Why was the peasant question so important to the Parties in Russia? No. 2. How did it happen that the peasants in Russia accepted the leadership of the working class first in the fight against Czarism and then in the fight for Socialism. No. 3. Since

the peasant's main desire is to own land, how can he be made an ally in the building of Socialism? No. 4. Do we have any similar problems in this country today?

Next section is entitled in capital letters THE NATIONAL PROBLEM. No. 1, What was the difference in their position on the national question between the leaders of the Second International and Lenin? Compare this with the difference between the policies of England and the Soviet Union today towards China, India and so forth. No. 2. What is the solution to the national problem as shown by Lenin? No. 3. What is the similarity between the peasant problem and the national problem? No. 4. [fol. 627] Should the working class support all national movements? No. 5. How can Stalin and Lenin's teachings on the national question be applied to the Negro question in the United States?

Next section is Strategy and Tactics. No. 1. What is strategy? No. 2. What is tactics? No. 3. Compare the strategy and tactics of the Second International with Lenin's. No. 4. What are the strategy and tactics of the Party in the United States today? No. 5. How did Lenin decide the right moment for starting the armed uprising? No. 6. Stalin says one of the tasks of the tactical leadership is to "locate at any given time" that particular link in the chain of processes which if grasped will enable us to hold the whole chain and prepare the conditions for achieving strategic success. Do you think the fight against chauvinism in our Party today illustrates this? No. 7. What is the Leninist attitude toward reforms? Compare our attitude toward repeal of the Taft-Hartley Act with Phil Murray's. No. 8. How can we achieve a united front under present conditions?

The next section, the Party. No. 1. Who should be members of the Party? Why? No. 2. What should be the relationship of the Party with the working class? 3. How is the Party different from other organizations of the working class like the trade unions, left-wing youth, women's and fraternal organizations? No. 4. Why do we need discipline in the Party? What kind of discipline?

[fols. 628-633] Style in Work is the last section. No. 1. What advice does Stalin give Party members about how

they work? No. 2. What weaknesses does he especially warn against?

That completes the questions on the study outline with Scales.

Q. Did I understand you were to get the Party line to answer those questions out of Government's Exhibit 5 entitled "Foundations of Leninism" by Joseph Stalin?

A. That is correct.

Q. I ask you to look at Government's Exhibit 5 and see if the table of contents as shown in "Foundations of Leninism" and the headings of the various questions *are* on your study questionnaire are identical?

A. Yes, they are. Each one of these headings that I have read off as being in capital letters represents a section of the book entitled "Foundations of Leninism".

[fol. 634] By Mr. Stanley:

Q. Mr. Clontz, following the meeting on January 17, 1950, when you were given the receipts by the defendant, Scales, for your membership in the Party and you were given certain other literature, outlines for study, did you thereafter meet with the defendant?

A. Yes, sir; I did.

The Witness: I met regularly with Junius Scales from that period for quite some time thereafter. Specifically there were a series of meetings in connection with the study outline.

I would read the book "Foundations of Leninism" at home, and then on meeting Scales we would discuss and I [fols. 635-638] would recite on what I had learned from the book.

The first session that I recall took place about February of 1950, some time after my birth date, which was February the 5th. At that time we started into a discussion of the questions and I asked Junius about this matter of the revolution, whether that was something that was going to take part, was going to come about in three or four generations, just when it was going to take place.

Junius answered me, that the Communist Party position in his belief was that the revolution was inevitable, that the depression would bring it about. He said as to when it

would take place, there were many factors that would decide that, but he could safely say that my daughter who was then a little more than one year old, would marry in a Socialist United States of America.

[fol. 639] The Witness: At that particular meeting we discussed also the textbook, "The Foundations of Leninism." This particular textbook Scales pointed out to me as the text and "Bible" for living and fighting for present-day Communists. We had covered at that time a good portion—well, over a hundred and fifty pages I know of the reading material—and he identified that very positively as something that I should study and learn as a Communist.

At that particular time Bernard Friedland came into the room. Bernard Friedland I had learned to be Party Organizer but I didn't know too much about him. He proceeded to cross-examine me for what must have been an hour or an hour and a half. He questioned me about my father's occupation, my ancestry, my background, whether I was from a rich family, a middle-class family or a poor family. He questioned me about my Army service. I explained that I had been an officer in the Army and Junius immediately spoke up and told him that he was sure that my sympathies were not with the officers' class, that I was really a good Communist even though I had been an officer. He questioned me as to my certainty that the Communist [fols. 640-641] Party was the thing for me. He asked me to explain to him why a reformed movement wouldn't work with reference to justice, for example, why you couldn't reform the Jim Crow justice, as he put it, rather than overthrow the Government. I gave him then the reasons that Junius had taught me during this period and he was apparently satisfied with my answer.

[fol. 642] The Court: When was the definition given to you by Scales?

The Witness: On so many numerous occasions, Your Honor, it wasn't a specific matter of his defining the term. Every time he used it, he simply defined the "Socialist United States" as the goal of the Communist Party after the revolution, and thereafter he would say, We will bring Socialism here to this country, or, We will bring [fol. 643] Communism here to this country, and he used the

term interchangeably in his discussions with me. I must have averaged two or three discussions a week with the defendant during the period from '49 until the end of 1950.

Q. On "Foundations of Leninism".

Now I hand you what has been introduced in evidence as Government's Exhibit No. 26 by—entitled "Problems of Leninism" by J. Stalin, and ask you to read from that book, the marked portions on page 131.

A. "Can such a radical transformation of the old Bourgeois order be achieved without a violent revolution, without the dictatorship of the Proletariat? Obviously not. To think that such a revolution can be carried out peacefully within the framework of Bourgeois democracy which is adapted to the rule of the Bourgeoisie, means that one has either gone out of one's mind and lost the normal human [fol. 644] understanding, or has grossly and openly repudiated the Proletarian revolution."

Q. Did you have a discussion of that passage with the defendant, Scales?

A. Yes, I discussed that passage and all the general material included in the "Foundations of Leninism" and some from that particular book.

The Witness: Scales at one of these meetings during February or March of 1950 and I discussed the passage there among other passages. Scales said that it showed the inevitability of revolution, that obviously you could not effect a change in government without a violent revolution. That, he reiterated his feelings, that a depression would come first. He stated that a revolution would come in this country much more easily than it had in the Soviet Union.

I asked him why. He said, "Well, in the first place with the Soviet Union was the first such Communist revolution. The Soviet Union had no one, the Communist Party in the [fol. 645] Soviet Union, rather, had no one outside the Soviet Union to help them whereas in our revolution here in the United States we had both the experience of the Communist Party of the Soviet Union and could count on the assistance of the Communist Party and of the Soviet Union in our revolution here in this country."

A. I recall during one of these meetings in the spring of

1950 Scales brought up the question of permanent revolution. Permanent revolution was defined by Scales as the concept that the Soviet Union and the Communist Party in the Soviet Union were not through with their job after they had achieved Socialism. In the Soviet Union they had a continuing obligation. He said that when the Soviet Union Communist Party had brought about a revolution and had brought Socialism there to the Soviet Union, they still were obligated under Stalin's teachings and under common sense, as he put it, to continue assisting the Communist Party all [fol. 646] over the world until they had overthrown the capitalist governments including that of the United States, that would threaten Communists, Communism and Socialism, unless they were overthrown.

Now I asked Scales, Does that mean that when the day of the revolution comes, Soviet Union is going to land troops?

Scales' answer to that was that as a practical matter the Soviet Union would not land troops at the commencement of the revolution, that the Communists here in the United States would have to start the revolution themselves. He pointed out that the Communist Party in the Soviet Union had learned through experience in China that direct Soviet Union guidance immediately in the form of leadership was not desirable. He said they sent a general over to China during the time the Chinese Revolution was taking place, and this Russian General that was sent over by the Communist Party resulted in having the troops completely routed, that Mao, the Chinese leader there in China had never been to the Soviet Union in his life at that period of time in 1950, but that instead the Soviet Union had sent political advisers over to educate him in the proper Communist technique, and had furnished them assistance through their military advisers and that sort of thing. He said that once the revolution was started, if it began to look as though the police power of this country would be [fols. 647-649] used against the working class in the Communist Party, then certainly the "mother country" as he called the Soviet Union, could not stand by and see that happen but would have to land troops to protect us.

Q. Do you recall at the present any other discussions, Mr. Clontz, during this series?

A. Yes, I had one brought to mind this morning reading over the question outline.

One of the questions that had to do with the difference in a union in the Communist Party. Scales taught that the difference, the great difference, was that the union could only see the next hill. He had previously told me the same thing, but he said that the Communist Party had a definite goal and a plan; they knew where they were heading for and that, therefore, they were able to guide the working class revolution better than a union or any other organization of that sort.

[fol. 650] Q. Do you remember about when that was?

A. It would have been approximately June of 1950. It was about the time I was preparing to be graduated from Duke Law School. At that time I had seen advertisements in the "Daily Worker" about the Jefferson School of Social Science. I pointed out one of the advertisements to Junius [fol. 651] Scales and asked him about the school.

Junius informed me that that was a school sponsored by the Communist Party of New York for Party members from all over the country and for people that were deemed to be good potential Party material. He then made the statement that he wished that some time I could go to the school.

Two or three days later I, having received the Government's permission to go to the school, announced to Scales my willingness to attend the Jefferson School of Social Science.

At that time he said that he would send for a catalog. He said, however, there were certain restrictions, that I couldn't simply send in an application to the Jefferson School and go to the school. He said that he personally was acquainted with all of the officers of the Jefferson School and that he would have to certify me to be a good Communist before my application would even be acted on. He said furthermore that I couldn't go up there under my right name, that I would have to adopt an alias, that no New York, that no Party members form the South or outside New York State ever attended the Communist School up there under their right names.

Finally, I asked him about the question of a scholarship

and he said, well, that he could arrange for me to get a scholarship where I would not be required to pay the dues [fol. 652] and other expenses in connection with the Party, with the school, and that if necessary he probably could arrange for the Party to take care of my housing while I was up there.

I indicated to Scales that I was willing to attend and filled out a registration blank for my attendance and mailed those off.

A. This is a photograph of my application for a scholarship which I filled out with Junius Scales' assistance. This picture was made in my presence by the Special Agent of the F.B.I. with whom I was then associated, on June the 20th, 1950. The same date I had received it from Junius Scales.

Q. What is the name of the applicant as shown on that [fols. 653-654] application?

A. The name of the applicant is Ralph Clayton.

Q. What is your middle name?

A. My middle name is Clayton.

Q. Does it have the name Clontz on it any place?

A. No. I had originally started to fill it out Clontz and Scales had me strike that out, when he explained to me that you couldn't go up there under your right name, you had to use an alias.

Q. Who suggested the use of Ralph Clayton rather than Ralph C. Clontz?

A. I don't recall. Junius and I discussed the matter. He said that it was customary to select your first name and some other name as the last name, and I believe I selected it since my middle name wasn't well known.

[fol. 655] Q. Now, as a result of the application and the recommendation that you say accompanied the application, did you receive a scholarship to the Jefferson School of Social Science?

A. Yes, I did.

Q. Did you go to that school?

A. Yes, I did.

Q. When did you go, Mr. Clontz?

A. I went on August the 5th, 1950.

Q. Prior to your leaving, were you given any further

instructions as to security or otherwise by the defendant, Scales, upon your arrival in New York and as to how to find the school, or any other information?

A. Yes. I was told by Junius that I should be particularly [fol. 656] careful around the Jefferson School of Social Science because the F.B.I would undoubtedly have that organization being watched, that I should be careful about people following me when I either went to the school or left the school. I was told that rather than have me simply go up and take courses at random, I'd been identified by Junius to two people at the Jefferson School who he said were members of the Party as well as officers of the school.

First was a Rosalie Berry, also known as Mrs. Abner Berry. She was the registrar at the Jefferson School of Social Science. The other one was Doxey Wilkerson. Doxey Wilkerson was the Director of Curriculum at the Jefferson School and also was the liaison officer between the Communist Party Headquarters in New York and the Jefferson School of Social Science. It was his job to see that the teachings of the Jefferson School reflected the Communist Party line as laid down by the Party in the National Headquarters.

Q. Well, will you describe what you found upon your arrival in New York and went to this school, and stating first where that school was located at that time?

A. The school was located, as I recall the address is 575 Avenue of the Americas. It was at 16th ond 17th Street about five blocks from Union Square in downtown New York.

I went in, identified myself to Rosalie Berry and was registered under my alias. I then was taken by her to [fols. 657-660] Doxey Wilkerson's office.

Now in order to get above the first floor in the Jefferson School, I found there were certain security regulations that had to be taken care of. No person went above the first floor of the Jefferson School without——

Mr. Rein: If Your Honor please, it seems to me, whatever regulations or anything they might have had in this Jefferson School are irrelevant in this proceeding. Certainly not binding on the defendant. I don't see what bearing they have on anything in this proceeding.

Mr. Stanley: If the Court please, that evidence is com-

petent for two or three things. First of all, we have at issue the aims and objectives of the Communist Party. This defendant himself says, made arrangements for this witness to go to that school. He told him to watch out for the F.B.I., he vouched for him, he sent a recommendation for him, he said he is personally acquainted with the leaders of the school, they were leaders in the Communist Party, he was familiar with the school and the structure, and he went there and as to what he found, I think undoubtedly this defendant is fixed with knowledge of what this witness might have expected to find.

[fol. 661] Q. Did you come back to North Carolina and report fully to the defendant, Scales, on what you saw, what you did, who you met, and the other details of that school?

A. Yes, I did. As a matter of fact I brought my class notes back that I had taken at the school and went over them with both him and Henry Farash. On my return from New York.

[fols. 662-664] Q. Now what courses were taught you up at the school, Mr. Clontz?

A. Well, on this particular occasion as I have testified——

Mr. Rein: Would the record show my objection to this testimony as to courses that he took, not in the presence of the defendant?

The Court: Yes.

[fols. 665-698] Q. Now after completing your three weeks at the Jefferson School, did you return to North Carolina?

A. Yes, I did.

[fol. 699] Mr. Rein: Can we have the place and time of this incident, Mr. Clontz?

The Witness: The best I can place it is several months after I had gone to New York. I have already testified, Counsel, I went to New York on the 15th of March of '51. This is two or three months later Mr. Scales came up.

* * * * * * *

The Witness: Scales related to me then the experiences he had been having with the F.B.I. in North Carolina. We discussed the matter of security. He said that the F.B.I.

had been following him around all over North Carolina, and that it had hampered his work. He said that Henry Farash had been forced to go underground and told about Henry Farash escaping from the F.B.I.'s surveillance.

He said that the Party had actually, that he and Farash had sold the Party car which was a '46 Oldsmobile that I had gotten them while they were in Durham, and had [fol. 700] traded that in on a '49 or a 1950 Pontiac. He said they wanted a fast and a powerful car so they could get away from the F.B.I. when the time came.

At that time Scales said that while Farash was underground, he did not know whether or not he would go underground. He said that, of course, if an emergency came up, or if war broke out with the Soviet Union, he would immediately go underground.

He commented that a friend of his, one James Jackson was a fugitive at that time from the F.B.I., and had proved to him that going underground was possible, that he could do it.

At that time I discussed with Scales what the general purpose of the Communist Party was in that particular period of time. He said that he and the Party had learned lessons from the experience of the Communist Party in Germany. He said that when Hitler had driven the Party underground and had outlawed the Communist Party that the Party communications had been all disrupted, that the Communist Party in this country was learning from the German Communist Party and that they were in the process now of setting up underground Party organizations including underground communications systems.

[fol. 701] He said that the Party was like an iceberg—made an impression on me at the time—a very small amount left visible on top and a vast underground network underneath. He said that, therefore, the two primary goals of the Communist Party were to attempt to influence or infiltrate—he didn't use the term infiltrate—large mass organizations, such as, he cited the NAACP, National Association for the Advancement of Colored People, and any other large groups to establish the Party's foothold in these organizations and at the same time to consolidate the underground apparatus.

At the same time I discussed with Scales my personal conduct as a Party member in New York. He promised that he would attempt on his next trip to New York to work out a liaison personally between myself and Communist Party Headquarters so that I wouldn't have to wait on him to get up to New York.

He said that while our original arrangements were that he or Farash were to come up once a month that obviously with the underground situation that wouldn't be possible. He said that meanwhile he was making Doxey Wilkerson my contact, that Doxey Wilkerson would direct my activities [fol. 702] as a Communist in the various Front organizations with which I was associated.

At that time I discussed with Scales the subject matter of these various courses and Scales was so impressed with the courses and the superiority in the teaching technique that he asked me whenever I heard a particularly valuable lecture or a particularly valuable speaker, he asked me to make notes on it and send those back to North Carolina for him to use down here in teaching other Communists down here. I actually——

[fols. 703-705] Q. Did the defendant, Scales, some time later contact you again in New York.

A. Scales contacted me again. I don't recall whether it was in New York or in Richmond, Virginia. At any rate Scales communicated with me some time in December of 1951. In his communication he advised me that he was going underground, that the Party had issued orders that in the future I must not use the telephone, the telegraph or the mails in communicating with him, that other means were safer, were slower but safer.

[fols. 706-713] By Mr. Stanley:

Q. When was this communication? I am not sure that I got that straight, that Scales told you he was going underground.

A. That was in December of '51.

[fols. 714-733] Q. Mr. Clontz, were the principles that were taught to you by the defendant, Junius Irving Scales, as the basic aims and objectives of the Communist Party

ever repudiated while you were an active member of the Party?

A. No, sir; they were not.

[fol. 734] Q. What was that date that you first went to the Jefferson School?

A. The date that I went to the Jefferson School was August the 5th, 1950, sir.

[fols. 735-750] Q. Then you returned, didn't see Mr. Scales at all in New York while you were at the Jefferson School; is that correct?

A. No, sir.

Q. During the 1950——

A. I didn't see him there during 1950 at the Jefferson School.

Q. Then you returned to North Carolina. When was that?

A. It would have been, three weeks after the 4th of August, be roughly the 25th of August or 26th.

Q. Then did you see Mr. Scales in the latter part of 1950, that is, from your return on to the end of 1950?

A. Yes. Several weeks after I got back from the Jefferson School.

[fol. 751] Q. That was the communication that said you should not get in touch with Mr. Scales by any means known to you; is that correct?

A. Well, not in so many words.

The message was that I should not use the—the Party had directed that I not use the telephone, the telegraph or the mails, then the cryptical statement, other means are slower but safer. That was the message, as I recall it.

Q. Was this communication typewritten?

A. I honestly don't recall, sir.

[fol. 752] Q. You don't know whether it was typewritten?

A. No, I actually don't.

Q. It was—was it signed?

A. I don't recall that. Customarily Scales would have simply signed it "J" or "J.S."

Q. Typewritten, might have just had initials "J.S."; is that correct?

A. Yes, sir.

Q. Do you have that communication?

A. I do not, sir.

Q. What have you done with it?

A. I don't actually recall. I would imagine that I furnished that to the Government in New York.

Q. I would like to see it.

A. I may have turned that over to Doxey Wilkerson, however, for this reason. I at least gave it to Doxey and asked him to get in touch with the Party and tell me what it meant.

Q. Previously you testified that you showed it to him.

A. Well, I handed it to him. Now I don't——

Q. Wasn't this a very important communication that you would naturally turn over to the F.B.I.?

A. Not if it would in any way cause the Party to be suspicious. You must recall——

Q. How would it cause the Party to be suspicious?

[fols. 753-821] A. If I had showed any reluctance to part with something of an incriminating nature that would. You have to never underestimate the enemy. Logically they would——

Q. Before you would show it to Mr. Wilkerson, however, you would copy it verbatim so you would make sure the F.B.I. would have it exactly as written, wouldn't you?

A. Either that or read it to them over the phone.

Q. But you may have turned it over to the F.B.I.? You are not certain?

A. I could have; yes, sir.

Q. I mean this supposition that you—Mr. Wilkerson may have taken it from you—was the supposition. You have no recollection that that occurred?

A. No, sir; I have no recollection either way. Either is conceivable.

Mr. Rein: I would like to see that communication, Your Honor, and I would like to ask the Government to produce it.

Mr. Stanley: The Government does not have the communication. If it did have it it would have gone in evidence in the Government's case. I can assure counsel we do not have that communication.

[fols. 822-824] Q. You didn't want to ask any questions to see whether or not Scales could make it appear to be sensible; is that correct?

A. That is not correct at all. I think I have answered the question.

Q. Well, I don't think you have.

A. As I stated before, a large majority of the Communist Party jargon seemed like idiotic babble to me, including this one conversation.

Q. I am not talking about including. I am talking about one conversation with Mr. Scales, not about a large majority.

A. All right. This one conversation seemed idiotic to me.

[fol. 825] Q. And that is the total conversation as you can recall, the one question you gave, and this one answer of Mr. Scales, and you can't recall anything else that was said either by you or Mr. Scales on the subject; is that correct?

A. That is all that I recall. That was what was outstanding in my recollection and is outstanding in my recollection with respect to that particular meeting.

I recall also his having given me some literature on that occasion, but that I don't think constitutes conversation.

Q. But aside—in the course of the two, three-hour conversation, you recall just this one question of yours and this one answer of Mr. Scales; is that correct?

A. That is correct.

Q. That is all you presently recall?

A. That is correct, sir.

Q. Scales in the course of this conversation was trying to convince you to become a member of the Communist Party; is that not correct?

A. You will have to ask Mr. Scales what his motive was. I am certain I don't know his innermost——

Q. Did you have that impression?

A. I had the impression that he was trying to interest me [fols. 826-922] in Communism and eventually entice me into the Party.

Q. He chose this method of stating the Communist Party aims, interesting you to become a member of the Communist Party?

A. As to whether he chose that method, again you have to ask him.

Q. That is what he did?

A. That and the other things that he did; that was one of the things that he did.

Q. That is the first statement he ever made to you as to the aims of the Communist Party?

A. It is the first statement I recall his having made; yes, sir.

Q. You said he did not make any statements at your first meeting with him. This is only your second meeting?

A. That is correct. I said I didn't recall his having made any statement.

[fol. 923] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Stanley: If Your Honor please, we were not requested by the Court to look at such a report to determine if such a report was in existence. I have not seen such a report. It was not in the purview of Your Honor's order, and the Government seriously objects to revealing to the defendant any report that it has.

The Court: Suppose we do it this way. Make the search, see if there is any report. There may not be any such report. If so, that is the conclusive answer. If there is a report, then let the Court see it and the Court will pass on whether or not it should be produced, after considering your objections and the demand for it.

Mr. Stanley: My associate, Mr. O'Donnell, tells me—and that I had no knowledge of this when I spoke to the Court a moment ago. We have been working on different matters over the week end—Mr. O'Donnell tells me that there is no such report.

The Court: All right, sir.

Now that concludes all discovery.

Mr. Rein: Except that I would like that statement to be stated to the jury, Your Honor.

Mr. Stanley: No, sir.

The Court: Why?

Mr. Rein: That there is no such report that this witness testified with respect to a communication which he received from the defendant in 1951, and in the files of the F.B.I.

[fol: 924] there is neitner any such communication nor any report concerning such communication. I think I am entitled to have that stated to the jury, Your Honor.

The Court: I think it best be raised by you, you still have Mr. Clontz on the stand.

Mr. Rein: He wouldn't know the answer, Your Honor.

The Court: I know, but let him be interrogated as to whether or not he made the report.

Mr. Rein: I have already interrogated him and he has said he did.

The Court: Well, then, I will let the United States Attorney make the statement that he has made a search for that report and does not find it, if you wish to make such a statement.

Mr. Stanley: If the Court please, in the absence of the jury I would like to say this: That we have been unable to locate any such report. That is what Mr. O'Donnell says. We are saying that in all fairness. We do stoutly maintain that this defendant is not entitled to see such a report even if one was in existence.

Now you recall the testimony of the witness that he received a communication, that he took it to Doxey Wilkerson, who was head of the school, to tell him what was in the report, or how to communicate with this defendant, in view of the fact that he couldn't use any of the known means of communication. I think I am quoting from substance [fol. 925] what the witness testified to, that Doxey Wilkerson in turn took it up with the National Headquarters of the Communist Party and told him in substance that he'd have to use a courier, something of that character, to communicate with the defendant, that that was the interpretation that the National Party put on this matter. Now the communication he said might have well been left with Doxey Wilkerson.

The Court: What was the contents of the communication?

Mr. Stanley: The contents of the communication, as I recall it, from the testimony of the witness, was something to the effect that in the future that he had gone underground and that in the future he couldn't communicate with him by any of the known means of communication. Mentioned,

I believe the witness testified, by telephone or letter or telegram.

The Court: That was a note from the defendant to the witness, Clontz?

Mr. Stanley: Some means of communication, as I remember the testimony of the witness. He said he wasn't positive whether it was a telegram or letter or some sort of note and it possibly could have been a telephone call.

Mr. Rein: No, it was a written communication because he said he had exhibited it. No question——

The Court: From the defendant to Clontz?

[fol. 926] Mr. Rein: That is Mr. Clontz's testimony.

Mr. Stanley: Well, Mr. Clontz can clear that up, but that he took it to Doxey Wilkerson and that he might well, if he exhibited too much interest in getting it back, whatever he left with Doxey Wilkerson, then it might indicate that he had some reason for wanting it back and that he might well have left it with Doxey Wilkerson. Now I think the defendant, if the statement is to be made in front of the jury, then I think the defendant should state whether or not he has contacted Doxey Wilkerson to try to get such a communication.

The Court: Practically, this is what you will have. The question will be asked Mr. Clontz again by defense counsel if he made any report and if he says he did, or has already said——

Mr. Rein: He has already testified.

The Court: Then counsel would then ask the Government to produce a report and the Government's answer will be that it made a search and the report is not available. I do not see any question of law there. It will just be a practical matter.

Mr. Stanley: Other than this, and we will not debate the question any longer. We just feel that the defendant has no right to make any demand upon the Government, and whether or not that indicates that if we did it, we should produce it, and we just think that is a——

[fol. 927] The Court: I would not take that as a concession or as a ruling on the question, but practically that is what is going to happen just as soon as the case starts again.

Does that take care of the discovery?

Mr. Rein: Well, I had other discovery motions with regard to reports generally, Your Honor, but I had intended to raise that after I was through with my cross-examination.

The Court: I think that would be more appropriate.

Mr. Rein: I think at this point, rather than at this stage——.

The Court: Suppose you let the witness resume the stand and bring the jury back.

(The jury returned to the jury box.)

(The witness Ralph C. Clontz, Jr. resumed the witness stand.)

Cross-examination (continued)

By Mr. Rein:

Q. Mr. Clontz, referring to your testimony with reference to communication you received from the defendant in December of 1951, communication with reference to not communicating with him by the ordinary means of communication, did you make a report on that to the F.B.I.?

A. As I previously testified, I do not recall specifically whether or not I made a report on this particular incident or communication.

[fol. 928] As I testified it was cutsomary during this period for me to furnish classified official reports to the Government, but it would be impossible for me to state as a positive fact that I either did or did not make a report to the Government.

Q. So if you previously testified in this case without qualification that you did make such a report, you now want to withdraw that testimony, Mr. Clontz?

Mr. Stanley: Object. The record will speak for itself. He is asking him inferentially if you did previously say so-and-so, now do you want to change your testimony. We object to that line of questioning.

Mr. Rein: My recollection of the testimony is that this witness had no doubt about having made a report on so significant a matter before this colloquy occurred, Your Honor.

The Court: To your knowledge did you make any state-

ment, earlier testimony, contrary to what you are now stating?

The Witness: No, sir; I did not.

The Court: All right. Then that will leave it to the record to speak.

Mr. Rein: Yes.

I would like to now ask Mr Stanley whether or not he is [fols. 929-950] able to find any such report in the files of the F.B.I. concerning this communication of December, 1951?

The Court: Have you been able to find any, Mr. Stanley?

Mr. Stanley: No, Your Honor.

The Court: All right.

By Mr. Rein:

[fol. 951] Q. When you were employed on a full-time basis with the F.B.I. was the suggestion, was the suggestion of the F.B.I. that you go to New York? Is that not correct, in March of '51?

A. Well, in answering your question, let me say that it was the suggestion of the F.B.I. that I go to New York at the time I went on the full-time basis.

Q. Well, that answers my question.

Now during the entire time you were in the Communist Party in North Carolina, how many members of the Communist Party did you personally meet? I am not talking about people whom Scales may have told you about, but people whom you personally came in contact with.

A. People I personally came in contact with.

Q. Yes.

A. I will have to name them for you?

There was John Meyers, Associate Professor at the University of North Carolina. Mr. and Mrs. Bernard Friedland.

Q. Do you mind if I take that down?

A. Not at all.

Henry Farash, Junius Irving Scales. Vera Lacob Scales. Gladys Meyer Scales. Laurent Frantz, a graduate student [fols. 952-974] at Duke University who worked for one of the professors there as an assistant.

Q. You can just give me their names.

A. Richard A. or Richard T. Koral, and his wife.

I will let you keep count for me.

Mrs. Laurent Frantz. Mina Abernethy.

[fols. 975-978] Q. Mr. Clontz, didn't the Communist Party sometimes express its position on force and violence as follows: "That what we claim would be as Communists was that we would be on the verge of achieving Socialism through the ballot, that the monopoly capitalists would immediately rise up in arms to defeat our goal of achieving Communism in the United States or Socialism through the ballot, and that then we would be forced to meet violence with violence."?

A. Yes, I have heard the Party state that, and that was explained to me by Doxey Wilkerson at the time we discussed it.

[fol. 979] Q. Did you ever hear him state—I believe you have stated, Mr. Clontz, in answer to my previous question—that the Communists were constantly stating to the public that they intended to achieve their aims by peaceful means? What I want to ask you, did you ever hear Mr. Scales say that?

A. Mind, Counsel, I was not the public to Mr. Scales. I was an undercover Communist.

Q. Did you ever hear him say anything other than to you?

A. No, I wouldn't say I had never heard him say that. [fols. 980-1009] It is entirely conceivable that he would have made that statement.

[fols. 1010-1012] Charles Benson Childs was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stanley:

[fol. 1013] Q. Following the discussions with your English teacher in the spring of 1948, what did you do?

A. Well, some time thereafter, during the summer, or the early part of the fall, I noticed that there was a pub-

lication put out about a speech to be given in High Point by a person whose name was Mike Ross.

Q. Now who was Mike Ross at that time?

A. At that time Mike Ross was an organizer for a union.

Q. Which union; do you remember?

A. Yes, it was a furniture union.

Q. I see. Did you go hear Mike Ross speak on any occasion?

A. Yes, sir; I went to hear Mike Ross on that occasion, and later I heard him give several, maybe a couple, of talks, but after one talk, I went up and discussed with him his speech and had a little discussion with him then.

Q. Now following that discussion with Mike Ross, what did you do in regard to your English teacher, if anything?

A. Well, through Mike Ross I met several people who [fols. 1014-1062] I later learned were with the Progressive Party and I returned to the high school and discussed what these people—discussed my conversations with these people—and she told me that, I mean, she didn't tell me in our discussions—after we had our discussions I decided, after considering it for awhile, that what these people were doing, I thought that it was in the interest of my Government, I thought that their views were dangerous, and I went to my Government and I told them what was going on, and I volunteered to give them any other information from that day on.

Q. What representative of the Government did you volunteer to disclose this information to, what branch of the Government?

A. That was the F.B.I.

Q. Then did you thereafter, after making your initial report to your Government, to the F.B.I., did you thereafter continue to associate with the individuals with whom you had been associating, and further your activities in that direction?

A. Yes, sir. I continued supplying information to the F.B.I. from that date, and also continued associations with people who I met through Mike Ross.

[fol. 1063] Q. All right. What else happened there, if you remember?

A. Well, in his explanation of the way that the Com-

munist Party should stay in industry, he pointed out that in the next presidential administration, that there would be an economic crisis and that five to six years later, that things in this country will come to a head, and he said, "Now, if we go back to school and lose our contact with mass organizations, then we would have to sit back and wait on the Red Army to liberate us."

Q. Now was anything said about any publications that you had seen over at Western Electric?

A. Yes, sir; the Western Electric Company has a book rack service, and they put on these booklets each week or every two weeks, they change them, certain little pamphlets which employees can pick up. Now one of these [fols. 1064-1065] I took with me and showed it to Scales. And the title of this book was, "Our Own Communists Can Cripple Us", and Scales said at that time after he had looked through the book, that we should keep the names of these people and shoot them some day.

[fol. 1066] Q. All right. What happened there?

A. At that meeting, I mean we went into the restaurant and he explained to me that plans had been made for the communist Party School which he had discussed with me at a meeting in the park, and he gave me a list of materials which I was to bring with me to the school and explained that throughout the school which would be about a week long, that I was not—I could not have any mail coming or leaving while the school was being conducted. There would be no telephoning. There would be no persons permitted to leave the school before the school was over. And he also cautioned me that I was not to tell any other Communist Party member that I had been invited to attend this school, that in case I missed the club meeting that I was to just explain that I had been in some activity.

[fol. 1067] Q. Did he give you the date this meeting would be held?

A. Yes, sir. It was to start around on August the 9th or 10th.

Q. Now at that meeting did Scales tell you what would be necessary for you to bring along with you?

A. Yes, sir. Scales gave me a list of things which I was to bring with me and explained that certain literature on

the—I mean that I was to bring certain literature and other literature which I would need would be supplied by the school.

(The Clerk marked a slip of paper as Government's Exhibit No. 42 for identification.)

Q. I hand you what has been marked for identification as Government's Exhibit No. 42 and ask you what that is?

A. This is the list written in my presence by Junius Scales. I was instructed to bring these things with me which he has on the list.

Q. Will you read the list.

A. Equipment——

Mr, Rein: May I suggest that you first offer it in evidence?

Mr. Stanley: We do offer it in evidence.

Mr. Rein: I have no objection.

The Court: Let it be admitted.

[fol. 1068] (The Clerk so marked a slip of paper as Government's Exhibit No. 42 in evidence.)

By Mr. Stanley:

Q. Will you read from the list.

(The witness read the list marked Government's Exhibit No. 42 in evidence.)

Q. Now is all that information you just read in Junius Scales' own handwriting?

A. It is.

Q. And was done in your presence?

A. Yes, sir.

Q. I hand you what has been introduced in evidence as Government's Exhibit 12, "History of the Communist"—"History of the CPSU" and Government Exhibit No. 41, "Ten Classics of Marxism", and ask you whether or not they are the books that Scales asked you to bring up to that school for studying?

A. These are the two books which he has on the list to bring to the school.

Q. Did you take those books with you?

A. I didn't have the copy of "Ten Classics of Marxism" but I did have the copy of the "History of the Communist Party of the Soviet Union".

Q. Did you take it with you?

A. Yes, sir.

Q. Did you have made available to you at the school [fol. 1069] "Ten Classics of Marxism"?

A. Yes, sir.

Q. Was that one of the regular courses of study?

A. Yes, sir.

Q. Now the information written on the bottom of this receipt that you said, or list of articles to take to the school written by Scales, there is some writing down there in ink. Would you tell us what that is, who placed that on there?

A. This writing in ink, 8/12/52 RJ is my signing of the date which I sent this to the Government. RJ stands for the initials which I used in reporting to the F.B.I. They stood for Ralph Jones, and I have written also "Received from Junius Scales on 8/4/52".

Q. Now did you thereafter go up to this school?

A. Yes, sir; somewhere on the 9th or 10th of August. I was picked up from the First Baptist Church in Winston-Salem by George Van Camp.

Q. Who is George Van Camp?

A. George Van Camp was a member of the Communist Party and also a member of the club to which I belonged.

Q. All right.

A. And Junius Scales and a man who was introduced to me as Abe.

Q. As who?

A. Abe.

[fol. 1070] Q. Who introduced you to him as Abe?

A. Scales.

Q. Did he identify who Abe was?

A. He later identified Abe as the representative of the National Committee of the Communist Party to that school.

Q. All right. How did you go over to the school?

A. Yes, we drove to the school in George Van Camp's automobile.

Q. And who was in the automobile when you drove to Winston-Salem over to the school?

A. Scales and the man who was introduced to me as being from the National Committee.

Q. Where was this school held?

A. The school was held near Walnut Cove, a farm. The farm belonged to the Binkleys.

Q. Now will you describe the physical location of the house on this farm with reference to public highways and access to the house and so forth?

A. Well, to get to the farm it is—it was necessary to go off the highway for a considerable distance and the road on which we traveled was very rough. I mean we had—the growth was near the edge and it was—it was very, a crude road, and then we drove past a house and then we had to go down another road to get to the farm. The house on the farm was fairly small and the place where we stayed was out in the woods where we had to cut down trees and put [fol. 1071] up canvas-like material to keep the rain out, and we set up Army cots under that canvas and that is where we stayed.

Q. Where was the school held? What kind of a building?

A. Well, the school itself was held in—out where we slept, inside the house, and also outside the house.

Q. And tell us who was present at that school and identify each one, or so many of those present that you can now recall?

A. I recall that there were approximately fifteen people at the school. Those at the school in addition to myself was George Van Camp, Jerry Van Camp——

Q. Will you identify these individuals as you go along?

A. Jerry Van Camp I had never met before but I later learned he was a member of the Communist Party and Scales had told me before that only members of the Communist Party would attend this school.

Q. All right.

A. And George Van Camp, who was a member of the Communist Party and club of which I was a member in Winston-Salem. Jerry Van Camp, who I knew to be a member of the Communist Party. Betsy Tyree, who either at that time or later married George Van Camp. Nat Bond from Durham and two women from the state of Virginia. There was a person who was introduced as Don who was

[fol. 1072] later told to me by Scales is the District Organizer for the state of Virginia, and there was also Mrs. Binkley, Mr. Binkley, Viola Brown from Winston-Salem——

Q. Who was she?

A. She was associated with several organizers there in Winston-Salem. And at one time for a short time Bill McGirt and Warren Williams; both of those were from Winston-Salem, were at the school.

Q. Now did the parties in attendance at that school use their right names?

A. No, sir; each person was assigned a name because of security restrictions, and the person who at one time had been introduced to me as Abe was later introduced to me at the school as Don.

Q. Did you have an alias?

A. Yes, sir.

Q. What was your name at the school, Mr. Childs?

A. My name was Phil.

Q. Now did Mr. Scales explain to you the purpose of this school?

A. The purpose of the school, as I understood it, was to——

Mr. Rein: Mr. Scales explained it?

The Witness: Mr. Scales explained. Mr. Scales explained that the purpose of the school was to give special [fol. 1073] training to outstanding Communist Party people in Virginia, North and South Carolina Districts.

By Mr. Stanley:

Q. What was Scales—what did he have to do with the school, his relationship?

A. Scales was the director of the school.

Q. Did Scales have a Party name at the school?

A. No, sir; they didn't give him a Party name because they said he was so well known that they knew who he was.

Q. Now can you tell us how that school was organized?

A. Yes, sir. The school was organized into three groups. I mean the students were organized into three groups and the staff of the school, certain members of the staff were also members of the group, sort of a guiding thing for each

group, and each group had a group leader who was appointed by Scales.

Q. Who was in your group?

A. My group consisted of George Van Camp, a lady from Virginia, Viola Brown, and Junius Scales and myself.

Q. Did you hold any office in your group, Mr. Childs?

A. Yes, I was the head of my group.

Q. Now how long was that school in session?

A. About August 9th or 10th, started about on a Saturday or Sunday and continued through to the next Sunday. [fol. 1074] Q. Did they have a set agenda, that is, to meet at regular hours in the morning, evening and night, or was that an irregular—can you tell us about that?

A. Yes, sir. The school had a regular agenda that would meet of the mornings where it would receive assignments, reading assignments and any other assignments, and then after it broke up into the groups and then individual groups would discuss and read these things, the assignments, and then the school would reassemble and discuss the assignments. Then in the afternoon the same process.

Q. How about the evenings?

A. Well, in the evenings they usually—was a special lecture given by some person attending the school.

Q. Mr. Childs, while you were there did you make notes of what happened at the school?

A. Yes, sir; I kept notes of the school.

Q. Would you look at those and tell me what they are.

A. These are the notes which I kept throughout the school.

Q. All these notes in your own handwriting?

A. Yes, sir.

(The Clerk so marked the papers as Government's Exhibit No. 43A, B, through H for identification.)

Q. Mr. Childs, I hand you what has been marked for [fols. 1075-1076] identification as Government's Exhibit No. 43A which purports to be your notes covering the Sunday and Monday session of that school up there and using those notes to refresh your memory, will you tell the Court and jury what occurred at that school on those days? [fol. 1077] Q. Go ahead.

A. On the first Sunday and Monday of the school——

Q. Now let me interrupt you there. Can you remember the dates? You said it was sometime in August of 1953, if I'm——

A. '52.

Q. 1952?

A. Yes, sir.

Q. Do you remember the date in August that the first session of that school was held?

A. It was on August the 9th or 10th. One of those days.

Q. All right. Go ahead.

A. When we first went to the school there was an agenda prepared for us which explained to us the way the school would be conducted.

Now the first part of the agenda would consist of detail work, such things as preparing breakfast for all the people [fol. 1078] there and washing dishes. That would be the detail work. And then the second thing would be a program of sessions which would be broken up into a theory—I mean a study of theory among the students. Then there would be a formal study of the theory in the groups, and an individual analyzes the theory in relationship to his or her work and means of improving this work. Then there would be a collective discussion of theory and work in which the whole school would reassemble and discuss the theory in relationship to the work which the people were doing, and at the conclusion of this group, of this whole school discussion, the conclusion itself was in the form of what was to be done in each individual work, and the work of the Party.

Then there was a criticism and self-criticism of what had taken place at this meeting.

Now for Sunday and Monday there was an assignment from the "Ten Classics of Marxism" from pages 200 to 229. Then later an assignment was Lenin's "Imperialism", Chapter Seven, pages 88 to 98 and an article by Leon, pages 212 to 215, Sections from "Political Economy", pages 203 to 204, and pages 167 to 170 from the "History of the Communist Party of the Soviet Union".

In connection with each assignment generally for each day there was a problem given. The problem consisted of a question or a statement which the Communist Party

[fol. 1079] would expect an American person to propose, and that we would take this problem and analyze it and fix an answer for this particular problem, and in this particular lesson the problem which was assigned was this:

We have to stop Communism, the main danger. We are fighting for freedom here and abroad against an aggressive Soviet imperialism. Now our purpose was to take this question and analyze it on the basis of what we were learning and be able to give an answer to the people who asked such a question.

The Court: What was the question?

The Witness: We have to stop Communism, the main danger. We are fighting for freedom here and abroad against an aggressive Soviet imperialism.

By Mr. Stanley:

Q. What did I understand you were to do with that problem?

A. We were to take that problem and on the basis of our teachings and understanding we were to formulate an answer whereby it would not—we would point out the fact that Communism was—or formulation of answer to this question was, to turn the question around and point out that Communism was really not the main danger, that there was another main danger in the United States and as far as we are fighting for freedom here and abroad was concerned, we were to explain that the United States really is [fol. 1080] not fighting for freedom here nor abroad; what it is fighting for is imperialism, imperialistic expansion of the United States.

And the section here against aggressive Soviet imperialism we were to explain to the people who asked this question, that it is really not Soviet imperialism, it is not the Soviet Union is not aggressive—that it is really the United States which is aggressive and which is imperialistic.

Q. Now what day was that discussed?

A. That was discussed on Sunday and Monday.

Q. All right. Now when you go to Tuesday, will you go to your Tuesday meeting.

A. The Tuesday meeting consisted of first five assign-

ments for reading. The first assignment was Lenin's "State and Revolution" the first three sections of the first chapter. The second reading was "The Nature of Capitalism", pages 80 to 87. The third, which is an alternate was "Twilight of World Capitalism" by William Z. Foster, pages 53 to 59. The fourth assignment was pages 778 to 785 from "Political Affairs" issue of the 1948 convention. The fifth assignment was from the "Ten Classics of Marxism", "Foundations of Leninism", pages 47 and 51 and 57 to 60—47 to 51 and 57 to 60, and in connection with these assignments, there were four problems, and these problems, like the others, were problems or questions which people would ask of Communists.

The first problem was this:

[fol. 1081] Is one country indivisible with liberty and justice for all? We have freedom of speech, press, assembly and worship and we vote for the government of our choice. Now in explaining to a person who asked that question, we, as Communists, were to point out that as far as one country indivisible, we were to point out that it is really a country composed of classes and the fact that the class division is ever between the workers and owners and the members of production, that within even these divisions of workers and owners, there is division among the working class, such as, the Negro and white division, and among the unions and the A. F. of L. and the C. I. O. and independent unions.

And also in the second part so far as liberty and justice for all is concerned, we were to point out the fact that the United States Government controls the courts, that so far as real justice through the courts is concerned, we were to point out that the Communists do not receive justice in courts, the Negro people do not receive justice, the trade unions' leaders, the working people, and we were to discuss the contrast between sentences imposed upon working people and the rich people for the same offenses, and also we were to—as reference to the remark, we have freedom of speech, press, and assembly and worship—to first, so far as freedom of press was concerned we were to point out that the capitalists want it, owns the press, that the fact [fol. 1082] that the letters to the editors are chosen by the owners and the publicity given to the Progressive Parties,

national conventions—now as to freedom of assembly, we were to tell the workers that the public assembly halls would not be rented to any Communists for Peace Council.

In contrasting that, there is not freedom of worship, we were to point out the bombing of Jewish churches and the fact that Negro people were not permitted to attend white churches, and as far as we vote for the government of our choice, we were to point out poll tax restricts voting, that the presidential nominees take place in smoke-filled rooms.

And the second problem assigned on that day was this one:

If a few Communists are so revolutionary and want to establish Socialism, why did you hide behind the Civil Rights and what you call Bourgeois democracy? Now in our answering that question, we were to point out that the Communist Party is really not trying to destroy the Bill of Rights, that it is trying to save the Bill of Rights, and that it is not standing behind the Bill of Rights, that it is standing in front of the Bill of Rights, and in fact, want to tell these people that the Communist Party wants an extension of the Bill of Rights; and then the exploitation of the working class by the capitalists, and we are to point out that the Bill of Rights has been denied to the people through a [fol. 1083] lack of E. P. C., through the enactment of the Taft-Hartley Act and the Smith Act, and that the Communist Party must try to extend these Bill of Rights, talking with the people.

Now the third problem is this country Fascist? Now is Fascism developing in the United States? How? Illustrate with several examples close at home. In answering this question, we were to point out that this country at the present time is not Fascist because under Fascism the Communist Party could not exist, so we were to tell them that Fascism does not exist now but the way that we were to prevent the development of Fascism was to try to in one example, to try to—in the alleged persecution of the Communist Party.

The fourth question was Why can't American capitalists go to the U. S. S. R. and distribute a pamphlet attacking Socialism? This was the last problem and our discussions led to these answers, that we were to point out that the

contrast between workers' positions under capitalism and the dictatorship of the Proletariat, which is the Soviet Union, and also trying to justify that Communism—Communists do not allow capitalists to go to the Soviet Union and attack Communism. We point out that unions do not permit bosses to attend union meetings.

Q. Did they have any discussion about whether the worker class was better off in Russia today than they were in this country?

[fols. 1084-1086] A. Yes. The position of the Communist Party has always been——

Mr. Rein: Objection. The question is whether there was discussion at this school, not what the position of the Communist Party——

The Court: Go ahead.

The Witness: Yes, sir. There was a discussion of the contrast of the position between the working under capitalism in the United States and Communists, which means the Soviet Union. They pointed out the conditions under capitalism were far worse and that it was only in the Soviet Union where the workers have real freedom.

[fol. 1087] Q. Mr. Childs, at the recess adjournment yesterday, I believe you were testifying relative to the program at the school up near Walnut Cove. As I recall, you finished your testimony in regard to Tuesday. Now will you tell us what happened at that school on Wednesday?

A. The Wednesday session had readings from an article by Gus Hall, pages 12 to 24. Article by Pettis Perry, White Chauvinism, Struggle for Peace, and there was three problems assigned for discussions in the groups and with any collective discussion of the whole school.

Q. Let me interrupt you there and ask you who Gus Hall was.

A. Gus Hall was affiliated with the National Committee of the Communist Party.

Q. Who was Perry?

A. Perry also was a functionary of the Communist Party.

Q. That is the National Communist Party of the United States?

A. Yes, sir.

[fol. 1088]. Q. All right. Go ahead and relate the problems that were given you and the discussion of the problem?

A. The first problem was this one: What makes our approach, referring to the Communist Party, approach to Negro question, different from that of liberators and social democracy? Illustrate from experience close to us. Well, in our discussions of that, pointing out the difference between the Communist Party approach and liberal approach to the Negro question, was that the Communist Party does not look upon the Negro question as a question of a minority group, in this country, that it looks upon the Negro question as a question of a Negro nation, meaning by nation that which is defined by Stalin to constitute a nation and whereas the liberal says that it is just a matter of democratic rights being granted through legislative action for the Negro people. The Communist Party takes the position that there is not just a minority race, that it is a nation, and using Stalin's definition of a nation, then they justify that this does constitute a nation.

Now in Stalin's definition of a nation which we discussed at this school, Stalin said that a nation is — historically evolved stable community, and that the Communist Party points out that there is within the South a historically evolved community of Negro people.

Another thing which Stalin used in his definition of a nation's language, they have the English language terri-[fol. 1089] tory. In other words, in order to have a nation that these people must have been centered or concentrated in a particular geographical location. In this case the Communists look upon this territory as the Black Belt of the South, which means that the Negro nation is concentrated in Virginia, North Carolina, South Carolina, and down throughout the South, and that the Communist Party's position on that is that since meeting these other requirements, such as, economy—in other words, within Negro communities you have a separate economic setup, and also psychological make-up in that the Negro people have an entirely different psychological make-up to the white people of the South, and the Communist Party's position that since the Negro nation in the South does constitute a nation from Stalin's definition, then these people have the right to set

the termination or setting up an entirely separate nation in the South because of Stalin's definition.

But they point out the liberals could not take this position. They take the position that only what we call constitutional rights, that the Negro people in the South should be given these and not an entirely separate nation setup.

And also in other Communist work, it is pointed out that the Negro nation in the South, although it does have the right to—what Lenin called self-emancipation or self-government, that this will not come about under capitalism, [fol. 1090] but it will only come about that they will have that right under Communism.

Another problem discussed on that day was this one:

Negro workers have the prime responsibility for tearing down the curtain separating Negro workers from white workers. How would we explain our formulation to a white worker? This problem was formulated into—in order to point out that it is not the responsibility of Negro workers to tear down the segregation in the South, that that is the responsibility to white workers in all industry.

The last problem discussed as: How would you explain to a Southern white worker that this, the struggle for Negro rights, is part of the fight for a better life for himself?

In answering this question or explaining to a Southern worker, the relationship between his rights and his fighting for rights in the Negro nation, is that in the South through exploitation of the Negro people, by paying them lower wages than the white worker, the capitalists intend to divide the working class and at the same time by paying the white worker just a little bit more money, it gives the white worker a feeling of superiority which the Communists claim will tend to keep a division within the South.

Q. Did that cover the principal topics discussed on Wednesday?

[fol. 1091] A. Yes. Covers about all we covered Wednesday.

Q. Will you go to Thursday and tell us what happened on that day.

A. Thursday's discussion started out with a historical analysis of the Communist Party of the Soviet Union.

Here it was pointed out that there was a new type of

Communist Party formulating the Soviet Union in 1903. It was formulated through strengthening units of the Communist Party, Soviet Union. It disposed and dispelled decisions, elements of the Communist Party, and through its application of Marxist theory and development of Marxist theory it won a large number or the masses of the Soviet Union to its side.

And it also explained that the Soviet Union defeated invasions in fourteen nations—that was referring to the invasion immediately, a few months after the revolutions in 1917—several countries, including the United States, sent expeditionary forces into the Soviet Union and they said that the Communist Party defeated invaders in these fourteen nations and that through Communism the Soviet Union became a modern industrial and agricultural nation and in reference to the Second World War, it pointed out that the Soviet Union defeated Fascists, a fact, in the main, singlehanded. In other words, the Soviet Union was primarily the defeater of the— or victor in the Second World War.

Q. What countries did it refer to when it told you at [fol. 1092] that school that the Russians singlehandedly defeated the Fascist nation? What nations were they referred to?

A. All the Fascist nations, axis, allies, and pointed out that today the Soviet Union is well on the way to building Communism.

Now, then, there was a discussion on our own Communist Party in the United States. In this discussion it was pointed out that our primary task is to Bolshevise, bring about Bolshevism similar to that which the Soviet Union did in developing its Communist Party.

And we also discussed weaknesses which will, might tend to lessen our ability to Bolshevise the Communist Party and these were Bourgeois backgrounds. In other words, several Communist Party members are from middle class or families which were relatively well-to-do, and that in the Communists' eyes a hindrance, is a hindrance to becoming a great Bolshevik.

And also we discussed that the Bourgeois thinking on the democracy—in other words, the present thinking of the American people on democracy is what the Communist

Party considers Bourgeois thinking in that they believe that the rights of workers are protected under the Constitution and the present United States Government. The Communist Party considers that is an incorrect approach to the question of democracy, that Bourgeois democracy is not what the Communists strive for. It is what the Communists strive for—a Socialist democracy, which I [fol. 1093] mean—throughout, using the term Socialist—and Communist, they relatively mean the same thing to a Communist.

And then we pointed out we must understand that the purpose of the Communist Party, the rod and historical position, is that it is the vanguard, that it is the first attack of the army. In other words, that it leads the working class to fulfilling its goal, which the Communist Party defines as being its goal.

And several other weaknesses which were discussed then was that the Communist Party did not lead a mass struggle for the American troops to get out of Korea when the Korean War first started. In other words, the Communist Party should—they attempted—but they did not succeed in getting a broad mass movement on the part of the American people in trying to get the Communists—I mean the American—troops out of Korea when the war first started.

And at the same time they were letting the veterans' committees' work follow up. At that time they were trying to infiltrate the different veterans' organizations in order to acquire roles of leadership in these organizations so they could guide the policy. And also members of the Communist Party, members are mainly middle class and pointed out, we need the Communist Party, the Communist Party needs to get these people in industrial concentration and what was meant by industrial concentration was that [fol. 1094] the Party needs to concentrate its members in industry and not in such fields as education or the professions.

Another thing in relation to the industrial concentration was that the Communist Party Clubs might consist of four to five members or even less, that the composition of these clubs should be such that the Communist Party

members in the same plants should be members of the same club; that would enable the Communist Club to formulate an influence better in those plants, and if it was not possible—in other words; if there were not sufficient members in a particular plant, that the people in the same industry, like in automobile or steel or in North Carolina textiles, people working in different textile mills should be in the same club because that would improve an analysis of particular problems related to textile workers.

And another thing which, in relation to this club composition and industrial concentration was evaluating work in trade unions in order to combat opportunism. Opportunism is to the Communist Party, is that taking advantage perhaps even for personal advancement without considering the over-all relationship between what should be done and the goals of the Party at that particular period.

Another was wavering, trying to correct leaning to one other side. In other words, failing to take a definite [fol. 1095] position on a problem or situation which might arise in connection with any work.

Also discussed the dues, literature and press and pointed out that dues to the Communist Party should be paid promptly, the literature should be distributed and the press refers both to the "Daily Worker" and any other publications of the Communist Party.

The second main topic in this was the discussion of criticism and self-criticism in the Communist Party.

The Communist Party takes the position that only through self-criticism in which a person analyzes the work which he has done in relation to the, what the goals of the Party were at that particular time is fulfillment of those goals and whether or not they were fulfilled and also errors in fulfilling those goals.

For example, if a club sets a particular goal for a person or a duty, then that person when he comes back, he has to report whether or not he has fulfilled that responsibility to the Communist Party, and if he has not fulfilled it, then it is his responsibility to stand up in—not literally stand up—in front of the group—but to the group explain why it was not fulfilled and his weaknesses and how he expects to correct those weaknesses, and in addition to a self-

criticism, the other Communist Party members of the club or whatever organization he belongs to, is also responsible [fol. 1096] for pointing out this person's weaknesses in failing to carry out assignments.

At the same time they take the position that the person who is being criticized should first be told his good points so that he will be in a more receptive mood for a criticism for failing to live up to responsibilities.

Now in this criticism the Party says that there are certain things which should be taken into consideration. In other words, the things to take into consideration are the forces available to the Party in that situation and that what this means is that in a particular plant, if the Party does not have sufficient number of Communist Party members to influence, say, a particular policy, then the Party should not, shall we say, quickly criticize for not having that policy carried through, but you have to consider what forces are available to that party in that situation.

Another thing was to discuss in criticism what the Party has done in past situations. In other words, what that means was, What has the Party been able to do in the past in relation to these problems and the forces which they had available and the other aspects of criticism was, What was the objective situation in which this was accomplished. In other words, what was the conditions under which these other things which the Party has done in the past were accomplished? In other words, perhaps the change in historical conditions of the country or changes [fol. 1097] in the situation in the plants. Say that perhaps there is a change though one situation there might not be a labor organization and the next—the next stage perhaps there is a labor organization. In other words, we have to evaluate things in relation to the forces and the situations which are available at that particular time.

Another thing we discussed on improving the Party was organizational looseness in failure to carry through an assignment. Well, this stems back through the purpose of criticism and self-criticism. In other words, to evaluate what the person has done and try to correct his failure and evaluate, why he did fail to carry out the assignment.

Another thing which in connection with this first dis-

cussion was liberalism in the Communist Party. In other words, the Communist Party does not take the position of liberals in reference to anything, but the Communist Party takes the position that it will use certain liberal movements or certain liberal policies or organizations in order to advance and use these organizations for the ultimate end of the Communist Party.

And in connection with this, we had an assignment from "Foundations of Leninism", pages 109 to 117, 119 to 124, and in connection with this reading and the previous discussions which were assigned this problem to discuss in the clubs and then come back in the school and have a [fol. 1093] general discussion of what each club could make to help solve this problem.

This was the problem: What proposal can you make to your group which will serve to Bolshevise and strengthen our Party?

Now in the club of which I was a member, we pointed out three main things which should be considered. First was the over-all machinery on hitting hot issues, lack of quick response to communication. What this first problem meant was—I mean methods whereby we should Bolshevise our Party—was that in the case of the Korean War which was a hot issue, when it first started, the Communist Party should have been in a position to have facilities available to it for putting out leaflets or any type of publication which it wanted to help bring about public opinion on that issue at that time which was the Korean War.

Q. Mr. Childs, may I interrupt you at this point? You stated that you had readings from "Foundations of Leninism". I show you what has been introduced in evidence as the Government's Exhibit No. 5 and state whether or not that is the book you referred to that you were giving readings from on this morning.

A. Yes, sir. This is the book "Foundations of Leninism", Joseph Stalin.

Q. I hand you what appears to be an identical book and [fol. 1099] ask you if you can identify the book that I hand you?

A. This is the book that I took with me to the Communist Party School and used throughout the school. It is identical to this Exhibit No. 5.

Q. All right. You may proceed.

A. A suggestion from our group was the role of vanguard in plants attacking politically white chauvinism and discussed that—what this means, attacking politically white chauvinism, is trying to get the white worker to break down the barriers of segregation in industries.

Then the school reassembled for the total suggestions on how to Bolshevise the Communist Party, and in all there were twenty recommendations made.

The first one was to bring good and close attention to criticism and self-criticism, which I have discussed.

The other was to not gloss over opportunism. The third one was application from day to day all aspects of our life or understanding of Marx, Lenin and Stalin, and what that means, that is that in conversations with people in factories, plants or wherever we happened to make them, any day-to-day event which might come up, we should interpret that event in relation to Marx, Engels and Stalin.

And it was pointed out, points out left sectarian errors and these left sectarian errors are the theories discussed by Lenin in "Left Wing Communism". And what that [fol. 1100] means is that the Communist Party does not take the position, the only, the policy of the Party can be achieved through the Communist Party. In other words, for a particular period perhaps, say, ending the Korean War, then the Communist Party should try to cooperate with other organizations in order to bring about an end to the Korean War or any other goal which the Communist Party might have at that particular time. What this is—a tactical maneuver in order to get support of whatever the Communist Party might happen to be at that particular period.

Over and underestimating militancies of workers. What that means is determining whether or not the workers at a particular period are willing to do certain things for whatever a certain program of the Party might happen to point out at that time. The Communist Party at the same time should recognize and appreciate its role of the vanguard of the working class. Now being the vanguard of the working class, the Communist Party says it does not follow the working class, that it leads the working

class, and how does it lead the working class? Will be pointed out later and be pointed out it leads the working class to acquiring infiltrating roles of leadership in any organization which it can, and that is why the Communist Party considers not only from that standpoint, from also, from that standpoint that it is the only party which is armed with the theory of Marx, Lenin and Stalin, and, [fol. 1101] therefore, is the only organization which is capable of leading the working class.

And we will discuss the organization to hear issues from their heart and the real meaning of security. The meaning of security means that the Communist Party considers security, that is, being careful, that the activity of the Communist Party is not known to the F.B.I., and that no stool pigeons or agents of the F.B.I. are able to infiltrate the Communist Party and learn how it operates. In strengthening our ties with working people—that goes back to the application of Marx, Lenin and Stalin—to day-to-day activities, and also trying to infiltrate organizations and acquire roles of leadership.

The Party is first. The next thing discussed was study of theory and the basic theory in the Communist Party has been the works of Marx, Lenin and Stalin, that their works are the basic theory on which all final decisions are made and that we, when anything comes up, that a question of a policy of a particular period, perhaps it might be adapted to a particular period—but in the final analysis, it is always made on the basis of the works of Marx, Lenin and Stalin.

Another con ideration was that as Communist Party members we were to remember at all times that the Communist Party always comes first. What that means is that members of the family, if you have a member of the family which is rather hostile towards Communism, well, that is [fol. 1102] relatively too bad because the Communist Party comes first. The individual desires, if a person wants to work in a particular location or go in a particular location, he must subject himself to the discipline and directives of the Communist Party. In other words, it is not up to him. The Communist Party will do all within its power to convince this person that the goal, that the assignment for

that particular person, perhaps the person does not agree with the plans, the person does not even want to do it, but the Communist Party says that the Party comes first, that each person's life must be based on the fact that he or that person is serving the Communist Party.

And in connection with this it was pointed out that we are not making sacrifices. In other words, in following directives of the Communist Party, doing things or working at a particular job or going to a particular place, which we might not like, that we are not making sacrifices. We are making a contribution. This contribution is being made to the final victory of Communism. Not only—and this final victory of Communism is the establishment of Communism in the United States.

In connection with the—directly related to this—was the discussion of factionalism. In other words, the failure to carry out the decision of the majority in higher organs of the Communist Party. Which means the failure to [fol. 1103] carry out decisions of the higher organs is that in the Communist Party all clubs and all divisions of organizations in the Communist Party follows what is known as democratic centralism in that all final authority, all final directives comes from the higher organs of the Communist Party. A club might make a decision in reference to a particular policy or assignment for a particular individual, but the higher organ of the Party can overrule that decision and the club will have to carry through its assignment of the higher organ.

The next thing discussed in trying to Bolshevise the Communist Party was to have more educational studying in both clubs and in a formal school, and also a lack of understanding the main line or deviating from the main line. The main line means the Communist Party position at that particular period in which the line was formulated.

In other words, a particular time the Communist Party might say that we believe in peace. Well, that then—although in readings of Marx, Lenin and Stalin, they clearly point out that the use of force and violence and the combining of illegal and legal means in trying to overthrow the Government—well, at the particular period then they might say, Well, we do not advocate that and that is the main line for that particular period, and in explaining

our policy to other people we should explain that that is the main—that that is the position of the Communist Party whereas we understand, Communist Party members, that [fol. 1104] the main line will change from one situation to the next, but the ultimate goal of the Communist Party always remains the same.

And in our struggles we should adapt a feeling of comradeship with other Communist members, and it was again repeated about the changing the composition of Party clubs in heavy industries, and specifically in this state on the basis of textiles and tobacco, that is, the concentration for the state.

One thing, next to the last one, was self-study, that a person should read the classical works of the Communist Party, Marx, Lenin and Stalin by himself and also in groups and in relation to our studying of the works of Marx, Lenin and Stalin, we should try to develop an understanding of the relationship between the theory of the Communist Party which we studied and application of that theory in our personal work, and that referred back in one particular instance, was the application, this day-to-day discussion with people.

And the final suggestion on that day was that the Communist Party should grow in the United States.

That about covers it.

Q. Covers Thursday's discussions?

A. Yes, sir.

[fol. 1105] Q. Mr. Childs, will you now go into Friday, and first, if you will, give us the books that, the literature that you used as a basis of Friday's discussion, if you have it.

A. Friday's discussions. We had a Chapter Seven, "Strategy and Tactics," from the "Foundations of Leninism."

Q. Let me interrupt you there.

Is this "Foundations of Leninism" that you refer to by Joseph Stalin the same as Government's Exhibit 5 that you identified a few moments ago?

A. Yes, sir; that is the same book.

Q. All right.

[fol. 1106] A. In the discussion of "Strategy and Tactics" on that day they pointed out later in reading an article by

a man by the name of Rockman, from the June, 1952, issue of "Political Affairs"—

Mr. Rein: How do you spell that?

The Witness: I have it here in my notes. R-o-c-k-m-a-n. Task in broadening the fight for peace.

Now the position of the Communist Party is that the fight for peace is a tactics of the Communist Party. And that, in relationship to our study of tactics there are certain things which we should do in order to try to develop support for a peace campaign, and in connection with that in the tactics was pointed out that these things we could use, certain organizations we should try to influence and use them as a means of furthering this tactics of the Communist Party which was a fight for peace. And some of these organizations which we specifically listed at the school, was the NAACP, the Quaker organizations, and send spokesm and material to various clubs and committees, veterans' organizations and the P.T.A. In other words, the Communist Party says that these organizations should be uti- [fol. 1107] lized in the tactics struggle for peace.

By Mr. Stanley:

Q. Was that the principal topic discussed on that day?

A. Yes, sir.

Q. Now if you will go into Saturday, please, Mr. Childs.

A. The Saturday session, the morning session included—I mean the Saturday morning session consisted of a report on an article by James Jackson, page 66, in the August, 1950, issue of "Political Affairs."

Q. Do you know who James Jackson was?

A. James Jackson, I understood at one time, was the Regional, Southern Regional Director for the Communist Party of the United States.

Q. All right. Go ahead.

A. This Jackson article concerned the theoretical aspects of the people's struggle in the South. In his article he pointed out, he discussed the background of the Southern communities, the facts which Jackson considered to be facts, which were elementary rights have been denied the people in the South, and that certain—such as landlords, bankers,

and industrialists—pointed out the state and political powers, the Dixiecrat Party, the Ku Klux Klan, the influence of political life of the South, and pointed out that the revolutionary pressures may develop in the South. He [fol. 1108] pointed out three revolutionary pressures which might develop, the Negro national liberation movement, the greater union movement of the democratic advancement facilities, the democratic advancement of the Southern man, pointed out the fact that the Communist Party needed to have a new attitude toward the South, and he went on through and discussed errors in view of the South and some corrections of those views, and the Saturday afternoon session was a discussion of Communist Party building.

This report was delivered by the District Organizer for the State of Virginia.

Q. What was his name?

A. At the school he was called Bob. In Bob's speech to us that afternoon he pointed out that the present historical error is imperialism, that the world is divided into two camps, the democratic camp, which is led by the Soviet Union and Eastern democracies, and the anti-democratic camp, which is led by the American capitalists. And he pointed out that in the capitalists' camp there is a necessity of export of capitalism which brings about the redivision of the world by force and Fascism, and also this export of capital and crisis within capitalist countries brings about an uneven development of capitalism which finds the United States brinking towards another world war.

Now he asked this question, How can this be stopped, [fol. 1109] How can this be stopped? And then he answered it. He said that the final solution is to—to economic crisis is only through the establishment of Socialism which can be established only through the overthrow of the capitalists, which through by a large, broad coalition led by the Communist Party—he said that tactics is broad coalition, the strategy is overthrow of the capitalist government. The coalition which is a tactics to be led by the Communist Party because only the Communist Party is armed with that theory, Marxism-Leninism, which can bring about the successful overthrow of the capitalist governments.

He said that there is no substitute for such a theory or

such a program. He also pointed out later on the weakness of the Party which has prevented it from obtaining this broad tactical mass coalition. The lack of clarity, the vanguard role—in other words, the lack of understanding that the Communist Party does not follow the working class, that it leads the working class of the United States, and underestimating the role of the working class—in other words, the working class is a particular role and the Communist Party has a particular role in leading the working class. Pointed out we should concentrate on cadres and mass movements. In relation to mass movements, in any relation which the Communist Party might be able to instigate or infiltrate, that these are to be used as recruiting grounds for the members of the Communist Party. In [fols. 1110-1111] other words, what they did was go through these organizations and they see what people tend to lean towards the Communist Party and also at the same time people who they might be able to influence and he discussed a lack of industrial concentration of the Party. In other words, sending members into particular industries which the Communist Party has designated as being concentration industry.

Also discussed the Negro liberation movement and here he pointed out the slowness on the part of the Communist Party to recruit Negro people and he pointed out that there has not been an increase in Negro members of the Party, that there has been a loss in Negro members of the Party, and, in order to try to keep Negro people in the Communist Party, he said we must, we should promote them to roles of leadership in the Communist Party.

He said that there had been a lack of attention to developments, trade union cadres. In other words outstanding Communist Party members who were in industry, and that these cadres had not been given enough schooling in attending classes and lack of—notwithstanding the work of the Communist Party, and that he pointed out how these weaknesses can be reversed.

In reversing the weakness of the Communist Party the members must grasp more firmly the necessity of building our Communist Party upon industrial workers. The same [fol. 1112] thing, going back to mass coalition in the indus-

trial concentration. Points out that we have a new ideological struggle. We must relocate our forces to key shops which comes back to assignment of Communist Party members to particular plants or particular industries involving full membership and planning of activation of the industrial concentration.

In other words, the Communist Party wants all members to take part in the industrial concentration program either actually planning it or actually carrying it out. Pointed out that the primary attention should be to shop cadre, should build industrial concentration, should check up on our work and point out the Communist Party builds and struggles and that there should be a recruiting program, that is, recruiting people for the Communist Party, always down from the district to the individual level, and estimates how many Communist members of the individuals or the district might be able to recruit.

Another one was to assign for a work as a recruiting—in other words, the Communist Party would assign Communist Party members the job of recruiting people for the Communist Party.

Develop special approach to youths and workers. In other words, analyze the situation of the women and the youth so that the Communist Party will be able to attract these people more than they have done in the past, and he [fol. 1113] mentioned, quoted Stalin and the cadre; decide everything that we must fight on that principle in the Communist Party and must try to have a cadre attend Party schools at least once a year and specifically building of the Party in the South. He pointed out the background, the struggles, the character and type and examination of new recruits and the relationship of reading literature and developing skill and know-how. In recruiting members in the South—and that about covers the discussion of Saturday.

Q. Did Warren Williams appear there on Friday afternoon?

A. On that day I believe, or some day. I recall it was either Friday or Saturday that Warren came to the school in order to take Don which I was previously introduced to as Abe, in order to get an airplane back to New York City.

Q. Who did you say Don was? Whom you were originally introduced to as Abe?

A. He was the National Committee of the Communist Party, National Representative of this school.

Q. I see.

Now on Sunday what did you say you did, that is, the second Sunday of the school?

A. The last Sunday of the school was devoted to what I have discussed to be criticism and self-criticism of the staff of the school, and each member of the school or each student of the school.

[fols. 1114-1118] What happened was that each staff member was criticized by the students and other faculty members and the students in turn were also criticized and their weaknesses pointed up in order that they might be able to correct these weaknesses and carry through the program of the Communist Party. The criticisms included those of Scales, Don, Marx, which was Nat Bond from Durham, Bob, the District Organizer for Virginia, Vera, which was Viola Brown from Winston-Salem, and these were criticisms of these people's pointing out their weaknesses.

[fol. 1119] Q. Mr. Childs, during the course of the school were there any demonstrations given there?

A. Yes, sir. Bob gave a demonstration.

Q. Tell us again who Bob was.

A. Bob was the District Organizer for the State of Virginia. He was a member of the staff of the Party school.

Q. Was Scales present at the time of this demonstration?

A. Yes, sir; he was present.

Q. Now will you tell the Court and the jury the demonstration that was given by Bob there?

A. The demonstration given by Bob, and he explained the purpose of it, was that we might need it on a picket line some day, was how to kill a man, using a wooden pencil or any pencil.

Q. Was a pencil, something similar to what I hand you, used in the demonstration?

A. Yes, sir.

Q. Will you demonstrate to the Court and the jury what [fols. 1120-1132] Bob taught or demonstrated to you in the use of a pencil to kill a person?

A. The pencil was to be placed in the palm of the hand.

Q. Stand around so the Court can see too.

A. So that the bank of the pencil will rest against the base of the thumb, and with this part protruding out over the hand. And then the pencil was to be, try to enter the person's body at one of two points, either at the, through the chest, through here (pointed) with an angle like this so that it would—try to penetrate as near the heart as possible. Also in case that was not possible, it was just to be used just as a regular dagger-type weapon and enter right at the base of the throat, right at the top of the breastbone.

[fol. 1133] In connection with a discussion of the Party

[fol. 1134] Club Betsy was trying to explain the purpose of a Party Club.

Q. Who was Betsy?

A. Betsy was—she attended the Party school and was the wife of George Van Camp.

Q. All right. Go ahead.

A. And in her trying to explain it, she—Scales interrupted her and said that he did not mean to say that she wasn't doing a good job, but she was getting a little confused, and Scales explained that the purpose of the Communist Party Club was not only for the Bourgeois democratic revolution but was for the ultimate Socialist revolution in problems of Leninism, Stalin discusses the difference between the Bourgeois revolution and the Socialist revolution.

[fol. 1135] A. He has recommended reading to me in which there was, of which this "Problems of Leninism"—it is founded in there—was Stalin clearly points out the difference between the Bourgeois democratic revolution and the Socialist revolution.

[fol. 1136] Q. This was in 1953? Now you are referring to——

A. '53.

Q. All right.

A. And at this meeting, it was a chance meeting at George and Betsy Van Camp's house where we had a short discussion on the Communist Party, what I was doing.

Q. Was Scales there?

A. Yes, sir; Scales was present.

Q. What about the second time you saw him in August of 1953?

A. That was, I recall, a little later in August. Perhaps near the end of the month. I don't recall exactly what time, but this was again a perchance of my meeting him there. It was not planned.

Q. Can you tell us the circumstances which you met him?

A. Well, I had gone to the house, to their apartment, and knocking on the door, and when, after awhile, George opened the door and saw who it was, and I went in, and then after we stood there and talked for awhile, Warren Williams and Scales came out of a back room. The door was formerly closed; said they wanted to be sure who it was before they came out.

Q. Mr. Childs, when was your last contact with the Communist Party?

A. That was Sunday morning, day before I took the stand.

[fols. 1137-1149] Q. During the entire period of your membership in the Communist Party what positions were held by the defendant, Scales, in the Communist Party?

A. He was Chairman of the North and South Carolina District.

Q. Of what?

A. Of the Communist Party.

Q. During the entire period of your membership in the Communist Party was there any change in its ultimate aims and objectives of the Communist Party of the United States?

A. During my association in the Communist Party it has never been told to me that the ultimate objectives have ever been changed.

[fols. 1150-1154] The Witness: I understood what Mr. Scales meant by the relationship of industrial concentration and wanting me to return to school, that if the Communist Party did not have people where they would be in positions to influence masses, organizations, that when the time came for things to come to a head, which I interpret to mean the revolution, that if we did not have that mass base, then it would be necessary for the Red Army to liberate us and we

didn't want the Red Army to have to go to all that trouble. [fols. 1155-1159] Q. In here, don't you? You didn't take any notes with regard to this incident that you have testified about the demonstration of the pencil; is that correct?

A. No, sir; no notes were taken on that because that was during a recreation period.

[fol. 1160] Mr. Rein: It seems to me, Your Honor, that particularly with regard to events that both this witness and Mr. Clonts have testified as being what they consider [fols. 1161-1191] to be the most significant event and the events that are most important in this matter, I think it bears on their credibility to show that even though by their own statements these are the most significant events, that there is no mention of it whatsoever, not any reports to the F. B. I. I think that that certainly bears on this credibility, their credibility in that respect because the fair inference would be, Your Honor, that although they might not have told everything to the F. B. I., they certainly would have told them the more significant matters.

The Court: No. As far as I will go will be to pick out any inconsistencies because I think that and that alone would have evidential standing, and I will ask the Government to produce those records.

[fols. 1192-1193] Fletcher Melvin Green was called as a witness by counsel on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rein:

[fols. 1194-1203] Q. And based upon that discussion, Professor Green, what was Mr. Scales' reputation for sincerity and honesty of conviction?

A. Well, I couldn't remember anything directly as to what anyone said about him. I would say that in general the point of view in so far as I could evaluate it among the members of the faculty was that he was a sincere, honest but misguided young man.

[fols. 1204-1254] ROBERT SONNE COHEN was called as a witness by counsel on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

[fol. 1255] By Mr. Rein:

Q. There have been writings in the Communist literature, [fol. 1256] that is, the United States, which you said you were familiar with in the past twenty years on this subject of the——

A. Oh, yes.

Q. Of the possibilities of peaceful developments of Socialism in the United States?

A. Yes. So far as I know the writings of the American Communist Party—this is—I think I can say with accuracy since 1935 certainly, it is consistently on this—there has been consistency, it has been consistently held that they can elect a majority in the United States. I could give citations on that, if you wish, if the Government wishes.

Q. Would you give some citation on that.

A. Your Honor, may I refer to notes?

The Court: Yes, refer to any notes you wish.

The Witness: Just on that question I thought I'd make some.

Oh, the Secretary of the American Communist Party, man named Eugene Dennis, wrote an article in the Communist Journal "Political Affairs" in September, 1948, the page reference is 815, and which he essentially refers to a long discussion by Engels in which Engels analyzes the condition for a peaceful transition to Socialism from capitalism and Dennis quotes this with approval and shows how he [fols. 1257-1305] thinks it applies to the United States.

Another one, perhaps one more will do—the other leader of the Communist Party of the United States, William Z. Foster, wrote what the Communist Party—yes, what the Communist Party has considered the chief document about itself, the chief orders which graphical documents called Foster's History of the Communist Party of the United States of America in that he specifically refers to the same

line of argument that I was indirectly telling you about from Stalin, so in both these men's writings they are the two chief leaders that I think of now—they have indicated that the Party, the Communist Party of the United States proposes to elect a Communist majority.

May I say that every time I have used the word Socialist I mean as the Communists mean it. There are, of course, many other people who call themselvse Socialists who are not Communists.

[fol. 1306] Redirect examination.

Q. Will you identify the book you are reading from.

A. Yes. This is the "History of the Communist Party of the United States".

Q. Who is its author?

A. By William Z. Foster.

Q. What is the date of the publication?

A. Published 1952.

Q. Would you read the excerpt to which you made reference, give me the page number?

[fol. 1307] A. This is page 551 and it goes over to 552.

"Marxist theorists, while warning the workers against capitalist violence have also pointed out possibilities for peaceful establishment of Socialism in countries where the democratic elements are strong. Thus Karl Marx, three generations ago, before the advent of imperialism with its highly centralized, heavily armed and bureaucratic state, said that, 'From Marx, if, for example, the working class in England and the United States should win a majority in parliament, in Congress, it could legally abolish those laws and institutions which obstruct its development.' From Marx.

"Lenin also in mid 1917 outlined a peaceful prospective for the Russian revolution. And Stalin, writing in 1928, while pointing out the danger of capitalist violence at that time, also said that with the strong government of world Socialism, 'a peaceful path of development is quite possible for certain capitalist countries.' From Stalin.

"The Communist Party of the United States of America proceeds upon the basis that such a possibility exists in the United States. The Communist Party orientation for a possible peaceful transition to Socialism in the United

[fol. 1308] States is based upon four elementary considerations; first, the fight of the working class for its immediate demand is the very substance of democracy. It strengthens basically the democratic forces in our country and by the eventual establishment of Socialism it raises democracy qualitatively to a new high level.

"Second, the working class led by the Communist Party harmonizes its methods with its end by fighting for both the immediate and ultimate objectives with the most peaceful and democratic means possible.

"Third, the workers and their allies constituting the vast majority of the people and possessing immense organizations now have the potential power to curb, restrain and make ineffective whatever violence the capitalists may undertake in their attempt to balk the will of the people and to prevent the establishment of Socialism.

"And, fourth, in recent years on the international scale, there has been an enormous growth of power in the camp of democracy and Socialism. The fundamental difference between the Communist Party and right-wing social democracy, and its Browderite variance—" I must interrupt. [fol. 1309] Browder is a former Communist leader. "—is not that the Social democracies want to establish Socialism by peaceful means and the Communists want to achieve it by violence. Instead the difference is that the Social democracies everywhere have abandoned Socialism altogether and are committed to an indefinite perpetuation of the capitalist system, whereas, the Communists have shown conclusively that in line with the democratic will and interest of the workers they are the ones that are resolutely leading the peoples of the world to Socialism. The Communist Party, although it does not advocate violence in the workers' struggles, cannot, however, declare that they will, there will be no violence in the establishment of Socialism in this country. This is because of the certainty of the reactionary attacks from the capitalists. The latter might even be able in case of inadequate resistance get masses to destroy democracy outright and to establish an American type of Fascist-like regime. In such even- there would result an entirely new political situation where the masses would be faced with the need of militant struggle for the

[fols. 1310-1321] most elementary economic needs and democratic rights. The United States there is a great danger of such massism. The Communist Party——"

Well, I can stop there. It repeats.

Q. Professor Cohen, I believe you have testified that your knowledge in regard to the views of the American Communist Party come solely from reading their writings, including this book and other articles; is that correct?

A. That is correct.

[fol. 1322] Mrs, A. [redacted] Scales was called as a witness by counsel on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rein:

[fol. 1323] — Where and when were you born, Mrs. Scales?

A. I was born in Richmond, Virginia.

Q. Draw from there then. Did you go to school in Richmond?

A. Yes, I did. I went to "Virginia—Randolph Alex School. It is now known as Saint Catherine's.

Q. Is that your total schooling? Did you go to a university?

A. Yes. No.

Q. Who is your husband, Mrs. Scales?

A. Alfred Moore Scales.

Q. When did you marry him?

A. In 1914.

Q. Did you move to Greensboro?

A. Right after that.

Q. At that time?

A. Yes.

Q. And you have been living in Greensboro since your marriage?

A. Almost entirely, except four years in Chapel Hill.

Q. What was your husband's occupation?

[fol. 1324] A. He was a lawyer.

Q. You are a widow now?

A. Yes.
Q. How many children do you have, Mrs. Scales?
A. Three.
Q. Is the defendant in this case, Junius Scales, your son?
A. Yes.
Q. When was he born?
A. March the 26th, 1920.
Q. Where?
A. In Greensboro.
Q. Did he go to school here in Greensboro?
A. Yes. He was first tutored at home and then he later went to the grade school here.
Q. Did he go to high school here in Greensboro too?
A. He went to junior high. I can't remember whether he went to senior high or not because right after that we left and we went to Florida for a winter and he went to school there and then we went to Chapel Hill where he went into graded school. I think it was his last year.
Q. Did he finish his schooling in Chapel Hill?
A. Yes.
Q. High school?
A. Yes.
[fol. 1325] Q. Did he then go to the University of North Carolina in Chapel Hill?
A. Yes.
Q. How long did he continue at the university, Mrs. Scales?
A. I think through his junior year, I believe.
Q. And that was when you were living at Chapel Hill?
A. Yes, I was living there.
Q. Then did he come back to Greensboro with you?
A. Yes.
Q. Where did he go to work then?
A. Yes.
Q. Where?
A. He worked in the Tax Department of the County of Greensboro.
Q. Here in Greensboro?
A. Yes.
Q. Did he subsequently go back to the university?
A. Yes, he did.

Q. Do you recall when that was or how long he stayed there?

A. Well, it was in 1940 and he went for the last quarter.

Q. I see. What did he do after that, Mrs. Scales?

A. I have to stop and think. Have to wait a minute and [fol. 1326] think what he did do.

Q. Take your time.

A. Oh, I know. Then he decided that he would not go back to school and that he would go to High Point to work.

Q. Did he have a conversation with you about that, as to his purpose in going?

A. Yes.

Q. What did he tell you?

A. Well, he said that he wanted to see if he could at that time—that was the way he expressed it—he wanted to live with the mill people and work among them and see if he could be of any help to them.

Q. Do you know how long he stayed there?

A. He stayed there until war was declared.

Q. What did he do then?

A. Then he volunteered immediately.

Q. Do you know how long he stayed in the service?

A. Four years.

Q. What did he do when he came out of the service, Mrs. Scales?

A. He went back to college.

Q. That is at the University of North Carolina?

A. Yes, he went back.

Q. Did it come to your attention at any time, Mrs. Scales, that your son had, was a member or official of the Commu- [fols. 1327-1331] nist Party?

A. Yes, I had heard from many people that he was interested in the Party, but I didn't ask him directly—directly until 1939 if he were a member, and then we had a conversation and he told me he was.

[fol. 1332] By Mr. Rein:

Q. Mrs. Scales, I believe you were testifying about a conversation that you had with your son in 1939 at which time he told you that he was a member of the Communist Party,

and then I think you were going on to his, the reasons he gave you at that time of his joining, becoming a member.

A. His reasons were always to be of help to his fellow man, and he didn't know of any other medium through which he could work successfully as he could through the Communist Party.

Q. Did he at that time state to you what he considered the aims and objectives of the Communist Party to be, Mrs. Scales?

A. Well, we had many discussions, and I was always so interested in his reaction and it always was that he wanted to help his—his whole idea was to help the underdog, as he [fol. 1333] expressed it.

Q. You say you had many discussions then?

A. Yes, I did.

Q. When did these discussions take place; the first one was in 1939; is that correct?

A. No. No, I had them before that but I wasn't sure that he was a Communist until then.

Q. Did you have discussions with him subsequently on the same subject and period of 1947 on?

A. Yes.

Q. '48, '49?

A. Yes.

Q. Did you ever discuss with him the question as to whether or not the Communist Party advocated the overthrow of the Government by force and violence?

A. Yes, I did. When it was a great deal of talk about it, I discussed it with him and wanted to know just exactly how he stood, and he said, "Mother, to my mind it would be just plain silly for a little minority group to try to overthrow the United States." He said, "They couldn't do it," and he said, "I hope you don't think I am stupid to think of such a thing."

Q. Did you ask him at that time or at any other time in these conversations you had with him how he thought the Communist Party would obtain its objectives in the United [fols. 1334-1379] States?

A. Yes. He said the only way would be to educate the people and if they wanted it, it was all right and if they

didn't, it was all right, but he liked to be able to get his ideas before the public.

[fol. 1380] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: The Court states that it has examined the report, that is, the report of the F. B. I. dealing with the [fols. 1381-1401] witness, Childs, and finds nothing in the reports inconsistent with the testimony given by Childs.

Now with that I understand the defendant rests.

Mr. Rein: May I—yes—may I ask one question with regard to that? Is Your Honor prepared to make any statement with regard to whether or not all of the testimony of the witness, Childs, is covered in those reports, or is Your Honor not prepared to state that?

The Court: I did not find that Childs had testified to anything that he had not reported.

Mr. Rein: Including the pencil incident.

The Court: Including the pencil incident.

Mr. Rein: In other words, Your Honor is stating that this was a report on the pencil incident in the files of the F. B. I.?

The Court: I will put it this way: That I found no report in the F. B. I. which contains a statement inconsistent with what the witness testified to, and I do not find that he testified to anything that he did not report.

Does that answer your questions?

Mr. Rein: Well, I don't know. I wish—I wonder if I can get an answer to a specific question, but if Your Honor doesn't care to——

The Court: My recollection is that the pencil incident was in there the same way that he testified to it.

[fol. 1402] Mr. Rein: I don't know whether your instruction includes what is covered by my proposed Instruction No. 5. You may not use the testimony as a statement made by other persons received against the defendant merely because such other persons were members of the Communist Party. The law does not make a member of the Communist Party responsible for the acts or statements of any other member merely because of their common membership in that organization.

[fols. 1403-1432] The Court: I do not think that there is any predicate for that instruction here because it has not

been brought in the evidence unless it was connected with him.

Mr. Rein: Well, I submit, Your Honor, that my view of the evidence is that there was not.

The Court: How does the Government feel about that?

Mr. McCusty: First of all, the Government would object to the form of such an instruction because I think it would not be clear. It would confuse the jury as to what was actually being said, the substance is probably all right except that we agree with the statement made by the Court, that all statements made in this case have been connected in some manner or form with the defendant.

[fol. 1433] EXCERPTS FROM OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT

John Gates came down here to Chapel Hill, brought down here by the defendant in the Communist Party to speak and caused a near riot.

Look at this "Southern People's Common Program". This is the Defendant's Exhibit 16 that they have brought here for your consideration. It is for us to go by. It is the program that they outline for us issued by the Southern Regional Committee of the Communist Party, U.S.A., 266 Seventh Avenue, New York 1, New York. On page 12 we read:

"We people of the South must rid our state of all remains of slavery time laws, customs and institutions. We must make our local and state governments genuinely representative and democratic. We must throw out the present gangs [fols. 1434-1537] of the Dixiecrats, demagogs and deadbeats now in Congress. They are betraying the interest of the South and welfare of the nation. We must send to Congress a delegation of true representatives of the Southern people, white and Negro labor, farmers and local businessmen."

Now clean out the crowd we have and what are we going to do? We are going to establish a Negro nation in the South; that is, according to Joe Stalin. He said that the Negroes have the same economy, the same psychological makeup, and they are all oppressed, and therefore, they constitute a nation and they have a right to govern them-

selves, but that that can only come about in a Communist state.

[fol. 1538] DEFENDANT'S PROPOSED INSTRUCTION No. 2

The indictment charges that during the period from November 18, 1951 to November 18, 1954, the Communist Party was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the government of the United States by force and violence, as speedily as circumstances would permit, and unless you so find, you must bring in a verdict of not guilty.

In order to support this portion of the indictment, you must find beyond a reasonable doubt that in the period in question at least a majority of the members of the Communist Party taught and advocated the overthrow and destruction of the government of the United States by force and violence, as speedily as circumstances would permit. The teaching and advocacy of the Communist Party, as an organization, or of some of its officers or leaders, cannot be imputed to the members of the Communist Party merely because of their membership.

DEFENDANT'S PROPOSED INSTRUCTION No. 5

You may not use testimony as to statements made by other persons as evidence against the defendant merely because such other persons were members of the Communist Party. The law does not make a member of the Communist Party responsible for the acts or statements of any other member merely because of their common membership in that organization.

DEFENDANT'S PROPOSED INSTRUCTION No. 6

The fact that the defendant used any book or writing in any school or class, or discussed such book or writing with some other person, or has read such book or writing cannot, standing by itself, be taken as proof that the defendant [fol. 1539] agreed with or approved any particular statement contained in such book or writing, or had knowledge of the teaching and advocacy of any other person with reference to such book or writing.

DEFENDANT'S PROPOSED INSTRUCTION No. 7

Intent is a state of mind and is purely personal. The intent of the defendant can be established only by his own acts, statements and writings. You cannot find the intent of the defendant from the acts and statements of any other person unless you are satisfied, and beyond a reasonable doubt, that the defendant authorized such acts and statements, knowingly consented to such acts and statements, or ratified such acts and statements after knowledge thereof.

DEFENDANT'S PROPOSED INSTRUCTION No. 8

In determining whether or not the defendant had the intent charged in the indictment, you cannot consider the testimony with reference to the acts or statements of any person other than the defendant himself, unless you are satisfied from the evidence that such other person was speaking or acting for and on behalf of the defendant and with the defendant's knowledge and consent.

[fol. 1540] CHARGE TO THE JURY

The Court: Ladies and gentlemen, let me have your attention for a few minutes and I will discuss this case with you. I may be of some help to you. At least, I hope I shall be.

As you know, this indictment is drawn under what is known as the Smith Act, and the indictment charges four things.

It charges first that the Communist Party of the United States is a group teaching or advocating the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances will permit;

Second, that the defendant was a member of this Party;

Third, that while a member of the Party, he well knew of its teachings and purposes;

Lastly, that he himself specifically intended to bring about such overthrow of the Government of the United States by force and violence as speedily as circumstances would permit.

Those are the accusations embraced in the indictment.

All of those charges, each and every one of them must

be proved beyond a reasonable doubt before the defendant [fol. 1541] can be convicted.

These four charges constitute the four elements of the crime of which the indictment accuses the defendant and there is no crime if any one of them is not proved.

The defendant has entered a plea of not guilty, and that is a complete denial of all of these charges; a denial of every inference of guilt, a denial of every implication of guilt and of the charges.

In considering this case I suggest to you that you consider it by taking each of the elements of the offense and consider it separately, and consider them in the order in which they are charged in the indictment.

In order to be punishable the criminal acts charged in the indictment must have been committed within the three years next preceding the finding of the indictment, that is, they must have been committed between November 18, 1951, and November 18, 1954, and unless the time is otherwise specified, the acts I mention as unlawful are to be understood by you as only those occurring within this three-year period.

Obviously, the first question for you to decide is this: Was the Communist Party of the United States during this three-year period a group or society criminally teaching and advocating the overthrow and destruction of the United States Government by force and violence as speedily as circumstances would permit. That is the first question for you [fol. 1542] to answer.

Now the answer to that question, and your decision on it, must be based entirely on the evidence that has been offered to you in this case. As you will recall, the evidence on this point from the Government's side, that is, from the prosecution's side, consists of certain books, documents, and treatises, and of the testimony of three members of the Party, testifying to what were the teachings of the Party, and on the defendant's side, the evidence consists of books, treatises and documents, and the testimony of a student of Marxism, Stalinism, Leninism and Communism, giving his opinion of what were the teaching of those authors and of the Party.

You should consider all of this evidence and ascertain

whether it does or does not prove beyond a reasonable doubt that the Communist Party of the United States of America taught and advocated the overthrow and destruction of the Government by force and volence as speedily as circumstances would permit.

You do not decide the case according to the greater number of witnesses. You decide the case according to the weight of the evidence, the persuasive or convincing power of the evidence. These questions must be answered by you according to what the evidence shows beyond a reasonable doubt, after weighing the evidence as I have indicated to you.

Let me emphasize to you again that the first question in [fol. 1543] this case is not whether Marxism, or Leninism, or Stalinism advocates the use of force and violence for a change of the government. The first question is whether the Communist Party of the United States, in fact, advocated the use of force and violence in such a change. You should, of course, consider the evidence in respect to what were the doctrines of Marx, Lenin and Stalin in determining what was the advocacy of the Communist Party of the United States of America. But what were the advocacies of Marx, Lenin or Stalin is not the final answer to the first question in this case, unless the jury should believe that the advocacy of the Communist Party in the United States was no more, nor less, than the advocacies of Marx, Lenin and Stalin.

In making your determination, your decision, of this first question, I may be of some assistance to you by telling you what does and does not constitute a teaching and advocacy of force and violence.

First, it is not criminal for any person or group to hold or express the belief that the Government of the United States should be completely changed. It is not criminal for any person or group to have such a change of government as a purpose or aim. It is not criminal to publicly advocate and urge such a change by peaceable and constitutional means. It is not criminal to criticize the Government and its policies, foreign and domestic, or to praise the policies of other governments, and this is true regardless of whether [fol. 1544] you agree or disagree with the truth or falsity of such criticism or praise. Nor is it criminal for the Com-

munist Party or anyone else to teach that should a change in our form of government be made and accomplished by peaceable and constitutional means, and thereafter the new government should be resisted by force and violence, then the new government would be justified in using force and violence to subdue such resistance; that is, if the change had been made by peaceful and constitutional means, the new government would have the right to protect itself against any other change save by peaceful, constitutional means.

You cannot convict the defendant merely because he was a member or an officer of the Communist Party, no matter what were the principles and teachings of the Party; for membership alone is not a crime. Moreover, the teaching in the abstract, or teaching objectively, that is, teaching, discussing, explaining or expounding, what is meant by the aim or purpose of any group or society of overthrowing the Government by force and violence, is not criminal. For example, study and discussion by the Communist Party or in school classrooms, or study groups, or public meetings, with the object of informing the participants or the audiences of such aims and purposes of the doctrines of Marx, Lenin or Stalin, is entirely lawful.

[fol. 1545] But it is criminal to advocate or urge the overthrow by force or violence of the Government at the opportune time. It is the "call to action," the use of language reasonably or ordinarily calculated to incite persons to such action, to overthrow the Government by force and violence at an advantageous time, that is criminal and is punished by the Smith Act. It is the calling for action, the advocating action, it is the inciting, or inducing to action, by words that reasonably are calculated to induce action, that is proscribed by the Smith Act—not simply the study or the exposition or discussion of such aims and purposes. It is the urge to put them into action that is condemned by the Smith Act.

There need not in fact be action. It is enough to be criminal if action is urged, the action to be taken as soon as circumstances will permit. But if no action is urged or advocated by language reasonably or ordinarily calculated

to induce or incite persons to such action, no crime has been committed.

It is in this understanding, and in this understanding only, that you must determine whether the evidence shows beyond a reasonable doubt that the Communist Party of the United States of America was a group or society teaching and advocating the overthrow and destruction of the Government by force and violence as soon as permitted.

If you are not convinced beyond a reasonable doubt that [fol. 1546] the Communist Party of the United States was such a group, that is, a group that urged and advocated the overthrow, then you can not find the defendant guilty and should acquit him without consideration of the remainder of the elements of the crime.

But, on the other hand, if you believe beyond a reasonable doubt that the Communist Party was such a group, then you should next consider whether the defendant, Scales, was a member or affiliated with the Party and the Court tells you, by the way, that that is admitted; he admits that he was a member of the Party. You must consider, secondly, whether he had knowledge of the aims and purposes of this Party, and, thirdly, whether on his part, he specifically intended to accomplish the overthrow of the Government by force and violence as soon as practicable.

To emphasize those points: To be punishable, the membership must have been within the period of November 18, 1951, to November 18, 1954. Earlier membership would not be covered by this indictment. It is barred, as not punishable, by the Statute of Limitations.

Knowledge by the defendant of the Party purposes must accompany the membership in order for the membership to be criminal, and that knowledge too must have existed during the three-year period.

And a specific intent, as I have already indicated to you, [fol. 1547] on the part of the accused to bring about the overthrow of the Government is also necessary and an indispensable requisite of the offense. Again, the intent must have existed during the three-year period.

Ladies and gentlemen, as you readily recognize knowledge and intent are states of mind, and they can not be, and hence they need not be, proved by what you and I know as direct

evidence. They can only be proved by circumstances. So in determining whether the defendant had the required knowledge and intent, you can, and should, consider his opportunity to acquire the knowledge, his education, his mentality, his study, his conduct, his words, his writings, and all circumstances indicating knowledge or intent, or a lack of knowledge or intent. In making the determination in respect to knowledge and intent, you are not limited to the occurrences during the three-year period for that purpose. You may consider evidence of his conduct as well as any other circumstances occurring prior to November 18, 1951.

If you have found beyond a reasonable doubt that the Communist Party of the United States was a group or society teaching or advocating the overthrow of the Government by force and violence at the propitious time, but you are not convinced beyond a reasonable doubt that the defendant knew of its purposes, or you are not convinced that he himself had the intent to accomplish that purpose, then [fol. 1548] you must find him not guilty, because those elements are just as indispensable to the offense as the aims and purpose of the Communist Party.

But if you do believe beyond a reasonable doubt that the Communist Party of the United States was such a group, and if you do believe that the accused was a member of the Party, and if you do believe that he well knew of its purpose and that he himself intended to accomplish that purpose, then you should find him guilty as charged in the indictment.

So much, ladies and gentlemen, for the principles of law defining and establishing the crime alleged in the indictment. I will endeavor now to explain to you the principles of law governing how you are to determine whether or not the conduct or circumstances constituting this offense do, in fact, exist. These are well known principles of law, but they are nevertheless fundamental, and they are binding upon every jury and every court in this land, and their repetition does not in any way, or familiarity does not in any way, lessen their importance. The first is this:

The Court charges the jury that whenever a person is charged with a crime he comes into court presumed to be

innocent, and this presumption of innocence is an abiding one, and goes with the defendant throughout the entire case and applies at every stage of it until it is repelled by proof.

Further, the burden is upon the United States to prove [fol. 1549] beyond a reasonable doubt the guilt of the defendant before he can be convicted. Mere suspicion or probability of guilt, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment. To warrant the conviction of the defendant, the evidence of the guilt of the defendant must be so conclusive as to exclude every reasonable theory or hypothesis of his innocence.

I have mentioned reasonable doubt and that phrase, perhaps better than any other, carries its definition. I will read to you an enlargement of that definition which may be of some aid.

I can define reasonable doubt no better than to say that it is a doubt founded on your sound and reasonable judgment after a consideration of all of the evidence in the case. A doubt that is engendered solely by sympathy or a dislike to accept responsibility for convicting is not a reasonable doubt. The law does not require absolute certainty, nor does it require proof beyond all possibility of mistake. It does require, however, that after weighing the entire evidence in the case, you should be satisfied to that degree of certainty that you would be willing to act on the faith of in your own important affairs. Therefore, if, after a fair and dispassionate consideration of all the evidence, you reach a point where you can say upon your conscience and [fol. 1550] judgment that from the evidence you are morally certain of the guilt of the defendant and that you can not reconcile the evidence with any reasonable theory of innocence, you will have been convinced beyond a reasonable doubt and you should find the defendant guilty. If, however, upon weighing all the evidence, it does not satisfy your judgment and conscience to that degree of certainty that will enable you to say that you are morally certain of the guilt of the defendant, you should return a verdict of not guilty.

There is in this case, as in so many cases, the question of what witnesses you are to believe. That is known as the

credibility, or believability of witnesses. That determination is solely one of and for the jury. The Court has no right and does not intend in any way to impinge upon that prerogative of the jury, and should anything that the Court says in this charge indicate its opinion or indicate recollection of the evidence different from yours, it is your duty to follow your own judgment. However, it is the duty of the Court to point out to you certain general principles which you should take into consideration when you consider this phase of the case.

There is no absolute or arbitrary guide or measure by which the jury shall determine the truthfulness or untruthfulness of a witness. Among the things which the jury may properly consider in such determination are whether the [fol. 1551] witness has any motive or reason for being truthful or untruthful in his testimony, whether there has appeared from the attitude and conduct of the witness any bias, prejudice or feeling, which may cause his testimony to be influenced thereby, whether his testimony bears the earmarks of truthfulness or untruthfulness and to what extent it is corroborated or confirmed by other testimony which is not questioned, or to what extent it is corroborated or confirmed by the known or admitted facts. The jury may also consider the intelligence of the witness, and his opportunity to have accurate knowledge of the matters to which he testifies. The jury should consider the testimony of the witnesses in connection with all the facts proven, and which are apparent, and from them determine the degree of credibility the jury will give to the weight, and the weight to be given to their testimony.

The Court charges the jury that the testimony of witnesses who were in the employ of the Department of Justice must be examined with greater scrutiny and care than the testimony of an ordinary witness.

In this case the defendant has introduced evidence as to his previous good character. Such evidence should be considered by the jury, and given such weight as it is entitled to receive when considered in the light of all the other testimony. If a person, by his conduct, has built up a reputation for good character, it is a fact which should be [fol. 1552] considered and the benefit of which should be

given to him, but it is only one fact to be considered along with all the other facts, and previous good character should not permit a person to escape conviction of a crime, if, considering all the facts, including the fact of previous good character, the jury is satisfied of his guilt beyond a reasonable doubt.

The Court charges the jury that if the evidence as to any material fact in the case is conflicting, the evidence of the good character of the accused may resolve such doubt into a reasonable doubt.

The defendant has not taken the witness stand and testified in his own behalf. The Court charges the jury that the defendant was entirely within his rights in not so doing, and that such failure does not create any prejudice against him and the jury should not permit that fact to weigh against the defendant in arriving at its verdict.

Ladies and gentlemen, the indictment in this case returned by a grand jury is in no sense evidence. It is simply a statement—a formal statement—of the charge or accusation made against the defendant, to apprise the defendant of what the charge is against him. The fact that it was found by a grand pury does not lend any weight to it as evidence.

You have to decide this case entirely on the evidence as you have heard it from the stand, and not on any opinion [fols. 1553-1572] not formed from this evidence. You decide it within and upon the law as outlined to you by the Court in this charge.

The Court reminds you that—you probably already know—the statements and arguments of the attorneys do not constitute evidence in the case.

Your verdict, whether it be a verdict of not guilty or guilty, must be unanimous. It must be the verdict of each and every one of you, the verdict of all of you, no matter which way it is.

When you retire to consider the case, you should select a foreman or forewoman to preside over your deliberations and to render your verdict, when you are ready to do so.

My understanding of the practice in this district is that the jury does not return a written verdict; simply returns into court and the foreman or forewoman at the request of

the Clerk announces the verdict of the jury. Your verdict would be not guilty or guilty, and no more. You do not have anything to do with the fixing of the punishment in the event you find the defendant guilty.

[fols. 1573-1585] JUDGMENT—April 22, 1955

The Court: It is the judgment of the Court that you be committed into the custody of the Attorney General of the United States or his duly authorized representative to be imprisoned for a period of six years unless sooner released by operation of law.

[fol. 1586] IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7016

JUNIUS IRVING SCALES, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AT GREENSBORO

OPINION—November 7, 1955

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

David Rein for Appellant, and Edwin M. Stanley, United States Attorney, and Kevin T. Maroney, Attorney, Department of Justice, (William F. Tompkins, Assistant United States Attorney, John H. Davitt and William G. Hundley, Attorneys, Department of Justice, on brief) for Appellee.

[fol. 1587] PARKER, Chief Judge:

This is an appeal in a criminal case by a defendant who has been convicted of violation of section 2 of the Smith

Act of June 28, 1940, 54 Stat. 670, 671, 18 USCA 2385. That section, as brought forward in the United States Code, is as follows:

> "Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or
>
> "Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or
>
> "Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—
>
> [fol. 1588] "Shall be fined not more than $10,000 or imprisoned not more than ten years or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

The indictment, which was returned on November 18, 1954, charged that the Communist Party of the United States of America has at all times been "a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit" and that the defendant Scales "had been a member of said Communist Party from January 1946 up to the filing of the indictment well knowing during all of said period that said Communist Party of the United

States of America was and is a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit."

The evidence in the record amply sustained the charge in the indictment. There was evidence, similar to that in *Dennis* v. *United States*, 2 Cir. 183 F. 2d 201, 341 U. S. 494, and *Frankfeld* v. *United States*, 4 Cir. 198 F. 2d 679, to the effect that the Communist Party advocates the overthrow of the Government of the United States by force and violence. It was admitted that defendant Scales was a member of the party during the period covered by the indictment and was chairman of the North and South Carolina District of the party; and there was ample evidence that [fol. 1589] he knew of its purpose to overthrow the government by force and violence, that he approved of that purpose and that he had so expressed himself to witnesses who testified on the trial.

The case was submitted to the jury in a charge which clearly excluded any possibility of "guilt by association". The jury was expressly instructed that, before there could be a conviction of defendant, four things must be proved beyond a reasonable doubt: (1) That the Communist Party of the United States was a group teaching or advocating the destruction or overthrow of the Government of the United States by force and violence, (2) that the defendant was a member of the party, (3) that, while a member of the party, he well knew of its teachings and purposes and (4) that he himself intended to bring about the overthrow of the Government of the United States by force and violence. In addition to this the trial judge carefully explained that the defendant could not be convicted merely because he was a member of the Communist Party but only upon a finding that he knew of and participated in the purpose of the party to overthrow the government by force and violence, saying:

> "First, it is not criminal for any person or group to hold or express the belief that the Government of

the United States should be completely changed. It is not criminal for any person or group to have such a change of government as a purpose or aim. It is not criminal to publicly advocate and urge such a change by peaceable and constitutional means. It is not criminal to criticize the Government and its policies, foreign and domestic, or to praise the policies of other governments, and this is true regardless of whether you agree or disagree with the truth or falsity of such criticism or praise. Nor is it criminal [fol. 1590] for the Communist Party or anyone else to teach that should a change in our form of government be made and accomplished by peaceable and constitutional means, and thereafter the new government should be resisted by force and violence, then the new government would be justified in using force and violence to subdue such resistance; that is, if the change had been made by peaceful and constitutional means, the new government would have the right to protect itself against any other change save by peaceful, constitutional means.

"You cannot convict the defendant merely because he was a member or an officer of the Communist Party, no matter what were the principles and teachings of the Party, for membership alone is not a crime. Moreover, the teaching in the abstract, or teaching objectively, that is, teaching, discussing, explaining or expounding, what is meant by the aim or purpose of any group or society of overthrowing the Government by force and violence, is not criminal. For example, study and discussion by the Communist Party or in school classrooms, or study groups, or public meetings, with the object of informing the participants or the audience of such aims and purposes of the doctrines of Marx, Lenin or Stalin, is entirely lawful. But it is criminal to advocate or urge the overthrow by force or violence of the Government at the opportune time. * * *

"It is in this understanding, and in this understanding only, that you must determine whether the evidence shows beyond a reasonable doubt that the Communist Party of the United States of America was a

group or society teaching and advocating the overthrow and destruction of the Government by force and violence as soon as permitted. If you are not [fol. 1591] convinced beyond a reasonable doubt that the Communist Party of the United States was such a group, that is, a group that urged and advocated the overthrow, then you can not find the defendant guilty and should acquit him without consideration of the remainder of the elements of the crime.

"But, on the other hand, if you believe beyond a reasonable doubt that the Communist Party was such a group, then you should next consider whether the defendant, Scales, was a member or affiliated with the Party and the Court tells you, by the way, that that is admitted; he admits that he was a member of the Party. You must consider, secondly, whether he had knowledge of the aims and purposes of this Party, and, thirdly, whether on his part, he specifically intended to accomplish the overthrow of the Government by force and violence as soon as practicable.

"To emphasize those points: To be punishable, the membership must have been within the period of November 18, 1951, to November 18, 1954. Earlier membership would not be covered by this indictment. It is barred, as not punishable, by the Statute of Limitations.

"Knowledge by the defendant of the Party purposes must accompany the membership in order for the membership to be criminal, and that knowledge too must have existed during the three-year period.

"And a specific intent, as I have already indicated to you, on the part of the accused to bring about the overthrow of the Government is also necessary and [fol. 1592] an indispensable requisite of the offense. Again, the intent must have existed during the three-year period.

* * * * * * *

"If you have found beyond a reasonable doubt that the Communist Party of the United States was a group or society teaching or advocating the overthrow

of the Government by force and violence at the propitious time, but you are not convinced beyond a reasonable doubt that the defendant knew of its purposes, or you are not convinced that he himself had the intent to accomplish that purpose, then you must find him not guilty, because those elements are just as indispensable to the offense as the aims and purpose of the Communist Party."

The principal contentions of defendant upon this appeal are: (1) that the act under which he is indicted is unconstitutional and void; (2) that prosecution of the offense charged is barred by section 4(f) of the Internal Security Act 50 USC 783(f); and (3) that the court erred in admitting and allowing the jury to consider evidence tending to show the purpose of the Communist Party to overthrow the government by force and violence, where such evidence did not consist of statements made by defendant or in his presence or related to matters occurring prior to the three year limitation period preceding the finding of the bill of indictment. Other points of minor importance are raised relating to the regularity and fairness of the trial which have been duly considered and which will be referred to after we have dealt with these three principal questions.

[fol. 1593] 1. The Constitutionality of the Statute

The portion of the statute here applicable is the third paragraph of section 2385 of Title 18 of the United States Code, quoted above, relating to membership in a group advocating the overthrow of the government by force and violence by one who becomes or remains a member thereof knowing of its criminal purposes. In the light of the decisions in the Dennis and Frankfeld cases, supra, we think there can be no doubt as to the constitutionality of this provision of the statute. It is said that those cases related to conspiracy; but the conspiracy charged was conspiracy to violate the statute and the validity of its provisions was necessarily involved and was expressly passed upon in the light of the same arguments relating to "guilt by association" and "clear and present danger"

that are made here. In the Frankfeld case we said (198 F. 2d at 683-684):

> "Defendants argue that, even though the Smith Act be not unconstitutional in its entirety, the 'membership' and 'literature' provisions of the act must be held invalid and that this invalidates their conviction, since violation of these provisions was charged as being among the objects of the conspiracy. What was said by the Supreme Court in the Dennis case is a sufficient answer to this argument. There is no distinction in principal between advocating through the printing and distribution of literature the destruction or overthrow of the government and advocating it by word of mouth. So far as 'membership' in an organization advocating such destruction or overthrow is concerned, such membership is condemned only where there is knowledge on the part of the accused of the unlawful purpose of the organization. Membership in an organization renders [fol. 1594] aid and encouragement to the organization; and when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in which it is engaged. Certainly it is within the power of Congress to forbid the circulation of literature advocating the forcible overthrow or destruction of the government or membership in an organization having such destruction as its purpose, where there is knowledge of such purpose on the part of one accepting or retaining such membership.
>
> "The defendants contend that these provisions of the statute are unconstitutional because they do not require a 'clear and present danger' as a condition of criminality; but it would be little short of absurd for a statute to forbid advocacy of the destruction of the government or membership in an organization formed for the purpose of such advocacy only in the event that they result in 'clear and present danger.' This would be to make the near success of an attempted crime the criterion of criminality for making the attempt."

The membership clause of the statute is, of course, nothing more nor less than a statute denouncing and making criminal a conspiracy to overthrow the government by force and violence. It is elementary that a conspiracy is a partnership in criminal purposes and that all are guilty who join it with knowledge of such purposes; and all that the statute does is apply this fundamental concept of conspiracy to an organization having for its purpose the forcible overthrow of the government. This was considered in the Frankfeld case, where we said (198 F. 2d 689): "If it be argued that [fol. 1595] the crime defined by section 2(3) is in essence the crime of conspiracy, the position of the defendants is not helped; for the result would be merely that such conspiracy is thus made criminal by two sections of the act." As the effect of the membership clause is to define as well as make criminal a conspiracy to overthrow the government, all that was said in the Dennis and Frankfeld cases as to the validity of the statute is pertinent here. In the Frankfeld case we said (198 F. 2d 682):

> "The question presented is not one as to freedom of speech or as to the right to organize for proper political purposes, but goes to the power of the government to outlaw and punish conspiracies whose purpose it is to overthrow the government itself by force and violence. Modern history is replete with instances of the danger to the government inherent in such conspiracies; and there is nothing in the Constitution or in any sound political theory which forbids it to take effective action against that danger. If it may take action to protect itself from being overthrown by force and violence, it necessarily follows that it may forbid conspiracies having that end in view and may punish such conspiracies as criminal. In the absence of conspiracy the 'clear and present danger' rule may furnish a satisfactory criterion of criminality in the case of ordinary speeches advocating force and violence; but such rule has no practical application to advocacy of violence in connection with conspiracies to overthrow the government, for the danger of such conspiracies is ever 'clear and present.' They are pregnant with potential evil, which, while hidden from view in normal times,

is likely to assert itself as an irresistable force when some national crisis presents an opportunity for a putsch or a coup 'etat."

[fol. 1596] In the Dennis case, the late Chief Justice Vinson, speaking for the Supreme Court, answered in the following language the argument that the statute must be held invalid in application of the "clear and present danger" rule:

"Obviously, the words cannot mean that before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionist, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt. * * *

"Likewise, we are in accord with the court below, which affirmed the trial court's finding that the requisite danger existed. The mere fact that from the period 1945 to 1948 petitioners' activities did not result in an attempt to overthrow the Government by force and violence is of course no answer to the fact that there was a group that was ready to make the attempt. The formation by petitioners of such a highly organized [fol. 1597] conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the

inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score. And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger. Cf. *Pinkerton* v. *United States*, 1946, 328 U. S. 640, 66 S. Ct. 1180 90 L. Ed. 1489; *Goldman* v. *United States*, 1918, 245 U. S. 474, 38 S. Ct. 166, 62 L. Ed. 410; *United States* v. *Rabinowich*, 1915, 238 U. S. 78, 35 S. Ct. 682, 59 L. Ed. 1211. If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added."

In his concurring opinion in the Dennis case, the late Mr. Justice Jackson pithily observed:

> "But it is not forbidden to put down force or violence, it is not forbidden to punish teaching or advocacy, and the end being punishable, there is no doubt of the power to punish conspiracy for the purpose.
>
> • • • • • • •
>
> "There is no constitutional right to 'gang up' on the Government."

[fol. 1598] "Guilt by association" is not punished by the statute; for knowledge of the criminal purpose of the organization is made a condition of guilt in joining it. The "clear and present danger" rule has no application to the statute, since what it denounces is a conspiracy to overthrow the government by violence; and Congress may unquestionably forbid incitement to crime and organization for that purpose and may make such organization criminal, irrespective of the immediacy of the danger resulting from such organization.

2. Effect of the Internal Security Act

Defendant relies upon section 4(f) of the Internal Security Act otherwise known as the Subversive Activities Control Act of 1950, 61 Stat. 987, 991, 50 USC 783(f), which provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute." The purpose of this provision, as defendant correctly argues, was to insure the enforceability of the registration provisions of the act by making the privilege against self incrimination unavailable as a defense to failure to register. The language of the section relied on, however, provides merely that neither holding of office nor membership in a Communist organization shall constitute per se a violation of a criminal statute. It does not purport to exempt from criminal liability membership in an organization advocating the overthrow of the government by force and violence where such membership is acquired or held with knowledge of the criminal purpose in which the organization is engaged. In other words, mere membership in the party is not a crime. Membership with knowledge of the criminal purpose of the organization remains a crime.

[fol. 1599] Whether the effect of the language used is to make the privilege against self incrimination unavailable to those who fail to register as required by the act, we need not stop to inquire. It is clear that the language used does not exempt from criminal prosecution members of the Communist party who hold membership in the organization with guilty knowledge of its criminal purpose to bring about the violent overthrow of the government. Even though the Communist Party has such purpose, membership per se is not made a crime under the Smith Act; and it is only membership per se, which is exempted from criminal prosecution under section 4(f) of the Internal Security Act. That no modification of the provisions of the Smith Act was intended by Congress in the passage of the Internal Security Act of 1950 is made abundantly clear by section 17 of the Internal Security Act, 64 Stat. 1003, 50 USC 795, which provides: "The foregoing provisions of this title shall be in addition to and not in modification of existing criminal statutes."

In view of this interpretation which Congress itself placed on the statute at the time of its passage, there is no occasion for further discussion as to its effect upon the Smith Act. The charge of the court, heretofore quoted, made it clear that defendant could not be convicted because of mere membership in the party.

3. The Evidentiary Questions

Defendant complains that the trial judge admitted and allowed the jury to consider evidence relating to the aims and purposes of the Communist Party, by documents and teachings with which he was not connected, that some of this related to aims and purposes other than the use of force and violence and that a considerable part of it related to publications and teachings prior to the three year limitation [fol. 1600] period preceding the finding of the indictment. We think that this complaint is entirely without merit. The evidence as to the teachings carried on by the party and the documents used in the teaching was clearly competent to show the aims and purposes of the party; that which related to infiltration, subversion and the arousing of dissension had a direct bearing on the purpose to overthrow the government by force and violence when a favorable opportunity should present itself; and the fact that some of the evidence related to the period preceding the limitation period was no objection to its admissibility, since there was no evidence of any change in the aims and purposes of the party in the meantime and the evidence introduced clearly indicated that there had been no such change. Of course, the defendant could not be convicted unless he was shown to have had knowledge of its aims and purposes and the jury was clearly so instructed; but there was ample evidence to establish such knowledge on his part. Aside from the fact that he was chairman of the party in North and South Carolina and on account of his position is reasonably presumed to have known its aims and purposes, there is direct evidence that he did have such knowledge. Thus, in a conversation with the witness Clontz, when Clontz, after reading the communist literature advocating revolution which defendant had furnished him, inquired whether communism could not be brought to the people of the United States through a

process of education, defendant replied in the negative and said that the use of force was the only answer. Clontz's testimony with respect to this conversation is as follows:

> "Additionally then I posed to Scales the question, If you can have a publishing company and if Communism is the better form of government and the better way of life, why can't we bring Communism here to the United [fol. 1601] States by educating the people, by showing them that this is the best form of government?
>
> "Scales answered me that that was entirely fallacious, that that would never work, that in the first place the Government of the United States owned all the media of communication, the newspapers, . . . the—I don't believe he mentioned television—but the newspapers and radio and other similar mediums; they controlled the schools, the other institutions of Government and that they would not permit the masses of people to learn the truth about this Communism, that in order to get the truth to the people you would first have to destroy the Government and destroy the mediums of communication control and destroy the institutions of Government, that Stalin and his followers had proved conclusively that ideas alone would never change the form of government or would never do anything. He said that it would be nice if revolution happened automatically but, he said, that unfortunately they didn't, that a small militant force had to bring about a change in government by revolution.
>
> "I recall he said that that is where we, the Communist Party, come in. He said that Engels, the philosopher of some kind, that collaborated with Karl Marx, had felt that when the revolution comes about, Government would just disintegrate and the people would just sort of run things very loosely. He said that Lenin had proved that that didn't follow, that when the revolution took place in the Soviet Union in Russia, that Lenin had taken the police power, that the Czar had used that police power to consolidate his position and as Junius put it, to protect the masses of the people from the encroachment of the foreign capitalist countries that

[fol. 1602] would try to come in and prevent the revolution.

"Scales said, and it made quite an impression on me, that force is the only answer, that ideas alone can never accomplish anything.

"That was the substance of our conversation at that time."

In a later conversation with Clontz on the subject of what aid could be expected from the Soviet Union in case of revolution, defendant said, according to Clontz's testimony:

"I recall during one of these meetings in the spring of 1950 Scales brought up the question of permanent revolution. Permanent revolution was defined by Scales as the concept that the Soviet Union and the Communist Party in the Soviet Union were not through with their job after they had achieved Socialism. In the Soviet Union they had a continuing obligation. He said that when the Soviet Union Communist Party had brought about a revolution and had brought Socialism there to the Soviet Union, they still were obligated under Stalin's teachings and under common sense, as he put it, to continue assisting the Communist Party all over the world until they had overthrown the capitalist governments including that of the United States that would threaten Communists, Communism and Socialism, unless they were overthrown.

"Now I asked Scales, Does that mean that when the day of the revolution comes, Soviet Union is going to land troops?

"Scales' answer to that was that as a practical matter the Soviet Union would not land troops at the commencement of the revolution, that the Communists here [fol. 1603] in the United States would have to start the revolution themselves. He pointed out that the Communist Party in the Soviet Union had learned through experience in China that direct Soviet Union guidance immediately in the form of leadership was not desirable. He said they sent a general over to China during the time the Chinese Revolution was taking place, and

this Russian General that was sent over by the Communist Party resulted in having the troops completely routed, that Mao, the Chinese leader there in China had never been to the Soviet Union in his life at that period of time in 1950, but that instead the Soviet Union had sent political advisors over to educate him in the proper Communist technique, and had furnished them assistance through their military advisers and that sort of thing. He said that once the revolution was started, if it began to look as though the police power of this country would be used against the working class in the Communist Party, then certainly the 'mother country' as he called the Soviet Union, could not stand by and see that happen but would have to land troops to protect us."

Defendant did not take the stand to deny either of these statements or to testify to any change of views on his part. Standing uncontradicted, they clearly established knowledge by defendant of the unlawful purposes of the party within the limitation period as well as prior thereto, since the running of the statute of limitations cannot empty a man's mind of knowledge of this sort. When defendant remained chairman of the party in the North and South Carolina district during the limitation period, he did so with clear knowledge of its purposes, as revealed in these [fol. 1604] conversations. Added to this is the testimony of Clontz that in December 1951, within the limitation period defendant informed him that he, the defendant, was going "underground" and that, on the orders of the party, Clontz was not to use the telephone, the telegraph or the mails in communication with him.

It was not necessary to his guilt that the defendant take part in the teaching or have a hand in the preparation of the documents of the Communist Party or even that he be shown to be familiar with the documents. All that it was necessary to show was that the party did advocate the overthrow of the government by force and violence and that he became or remained a member during the period not barred by the statute of limitations with knowledge of that unlawful purpose. The evidence objected to on the ground that it

was res enter alois acta was clearly competent to establish the unlawful aims and purpose of the party. With respect to that which showed knowledge prior to the statute of limitations, this was clearly competent as scienter and intent were elements of the offense. See *United States* v. *Mesarosh* 3 Cir. 223 F. 2d 449; *United States* v. *Schneiderman* 106 F. Supp. 892, 897. There can be no question but that the evidence objected to is competent in a conspiracy case. See *United States* v. *Flynn*, 2 Cir., 216 F. 2d 354; *Short* v. *United States*, 4 Cir. 91 F. 2d 614, 618; *Cameriato* v. *United States*, 4 Cir. 58 F. 2d 557, 558. And as pointed out above, a charge under the membership clause of the Smith Act is a charge of conspiracy. There is no magic in the use of the word "conspiracy" or "conspire"; and to charge that defendant became or remained a member of an organization advocating the forcible overthrow of the government is to charge that he became a party to an unlawful conspiracy for the purpose and makes applicable the rules relating to proof of guilt in joining a conspiracy.

[fol. 1605] 4. Other Contentions

Other contentions of defendant may be dealt with briefly. The contention that the evidence was not sufficient to sustain the verdict is manifestly so lacking in merit, in view of what has been said, as not to warrant further discussion. The requested prayers for instruction were properly declined as the law was fully covered in the court's charge in a light as favorable to the defendant as could possibly have been given, and the requested instructions would have served no purpose except to confuse the jury. The government's summation did not exceed the comment that is reasonably to be expected in jury arguments and the trial judge expressly instructed the jury that "the statements and arguments of the attorneys do not constitute evidence in the case." It is elementary that whether a mistrial shall be declared because of arguments of counsel is a matter resting in the sound discretion of the trial judge; and, certainly, there was no evidence of any abuse of discretion here.

The defendant's challenge to the grand jury on the ground that the clerk of the court and the jury commissioner had delegated their functions to others is without merit.

The fact that they asked leaders of various organizations to furnish them with names of persons qualified to serve as jurors is unimportant so long as they themselves made the decision as to what names should go in the box. There is nothing to indicate that the persons whose names were placed in the jury box did not represent a fair cross section of the community or that defendant was prejudiced in any way by the method of selection. The questions propounded by the judge to the trial jury on the voir dire were sufficient for the selection of an impartial jury and that was all that defendant had a right to ask. The form of the questions to [fol. 1606] be propounded for that purpose is a matter resting in the discretion of the trial judge. *Dennis* v. *United States* 2 Cir. 183 F. 2d 201, 226. Defendant complains because the judge did not excuse for cause three of the jurors who were subsequently peremptorily excused in the exercise of defendant's right to strike. The judge found, however, that these were impartial jurors and we would not be justified in setting aside his finding with regard thereto. *Reynolds* v. *United States* 98 U. S. 145, 156.

Defendant complains because the judge denied his request that his counsel be furnished with F.B.I. reports to the Department of Justice as to statements of the witnesses Clontz and Childs and that the selective service file of Childs be produced for examination by his counsel. These requests were properly denied. As to the F. B. I. reports on the statements of Clontz and Childs, there was no suggestion that they contained anything contradictory of testimony given by these witnesses on the trial, and the trial judge, who examined the statements, held that there was nothing in them contradictory of that testimony. There is nothing in the Constitution or elsewhere that permits a defendant to conduct a fishing expedition of the sort here proposed. The Constitution guarantees to a defendant accused of crime the right to be confronted by the witnesses against him, not the right to rummage through the secret files of the government in the hope that he may possibly find something contradictory of such witnesses. The same may be said with added force as to the selective service file of Childs, where the purpose was to rummage through a confidential file of the government in the hope of finding something that might

contradict a witness as to a collateral matter. There is nothing to the contrary in *Gordon* v. *United States*, 344 U. S. 414. There a key witness for the government had admitted [fol. 1607] on cross examination that he had given statements contradictory of his testimony to government agents and that sentence on him had been withheld for complicity in the same crime by the judge who advised him to tell the whole story to the probation officers even though it might involve others. The decision was limited to the narrow case thus presented and expressly distinguished from "any broad or blind fishing expedition among documents possessed by the government on the chance that something impeaching might turn up," (see 344 U. S. at 418-419) which is the case here.

The defendant had a fair and impartial trial before an able and experienced trial judge. He was shown to be not only a member but also the chairman for the North and South Carolina District of the Communist Party, an organization shown to be an organization advocating the overthrow of the Government of the United States by force and violence, and held to be the basis of the criminal conspiracy charged in the Dennis, Frankfeld, Flynn, Mesarosh and Shneiderman cases, referred to above. Uncontradicted testimony as to statements by him showed that he was thoroughly aware of the unlawful aims and purposes of the party, was in sympathy with those aims and purposes and entered into its activities with complete understanding of what was involved. On the evidence before it, the jury was amply justified in finding him guilty of the crime charged; and we find nothing in the record which would justify us in awarding a new trial.

Affirmed.

[fols. 1608-1618] IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7016

JUNIUS IRVING SCALES, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

JUDGMENT—November 7, 1955

Appeal from the United States District Court for the Middle District of North Carolina.

This cause came on to be heard on the record from the United States District Court for the Middle District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

November 7th, 1955.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 1619] IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[Title omitted]

ORDER DENYING REHEARING—November 17, 1955

This Court having at its present November term, 1955, rendered its decision affirming the judgment of the said District Court appealed from in this cause, and the appellant having on November 16, 1955, filed a petition for a rehearing of the said cause and, after careful consideration thereof, being of the opinion that the petition for rehearing presents no question not heretofore fully considered by the court,

[fols. 1620-1621] It is now here ordered by this court that the rehearing asked for be, and the same is hereby, denied.

November 17, 1955.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 1622] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 6th, 1956.

Earl Warren, Chief Justice of the United States.

Dated this 5th day of December, 1955.

[fols. 1623-1624] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 16th, 1956.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 30th day of December, 1955.

[fol. 1625] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed March 26, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted,

and the case is assigned for argument immediately following Nos. 308, 309, 310, 547, and 566.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9979-6)